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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 747

HENRY A. WALLACE, SECRETARY OF AGRICULTURE, ET AL., PETITIONERS

vs.

ARTHUR W. CUTTEN

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 6, 1936

CERTIORARI GRANTED MARCH 9, 1936

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1 IN THE UNITED STATES CIRCUIT COURT OF APPEALS

Entered Feb. 2[illegible] 1935.

For the Seventh Circuit.

Thursday, February 28, 1935.

Court met pursuant to adjournment and was opened by proclamation.

Before:

Hon. William M. Sparks, Circuit Judge.

Arthur W. Cutten
5467 *vs.*
Henry A. Wallace, Secretary of Agriculture, and Henry A. Wallace, Secretary of Agriculture, Homer Cummings, Attorney General, and Daniel C. Roper, Secretary of Commerce, sitting as a Commission under The Grain Futures Act.

Petition for Review of Order of Commission under Grain Futures Act.

Arthur W. Cutten, having filed in this court, by Orville J. Taylor and James J. Magner, his attorneys, his written petition praying that this court review and set aside a certain order entered on February 12, 1935, by a commission composed of the Secretary of Agriculture, the Secretary of Commerce and the Attorney General, sitting as such Commission pursuant to Section 6(b) of The Grain Futures Act, 1922 (7 U. S. C. A., Sec. 9), and for a supersedeas pending such review;

And it appearing to this court that a copy of said petition has been served upon the Secretary of Agriculture, as the chairman of the said Commission, and upon the Attorney General, and the court having considered the averments of said petition, on motion of said appellant:

It Is Hereby Ordered and Adjudged:

1. That the appeal of said Arthur W. Cutten from the order of said Commission entered February 12, 1935, be and the same is hereby allowed, and a review of said order is hereby granted.

2. That the Commission shall forthwith, but not later than sixty (60) days from the date hereof, file with the Clerk of this

court a transcript of the record heretofore made by said Commission, including evidence received.

2 3. That the order of the said Commission entered February 12, 1935, providing: "that all contract markets refuse all trading privileges thereon to Arthur W. Cutten for a period of two years from March 1, 1935," be and the same is hereby stayed until the disposition of this cause by this court, or until the further order of this court, provided that if this appeal is finally dismissed the two-year period specified in said order shall begin to run from the date of such dismissal or such other date thereafter as the court may direct.

4. That pursuant to Rule 21 of this court the parties hereto may, by written stipulation filed with or prior to the filing of the transcript above mentioned, agree that only parts thereof shall be printed and the case will be heard thereon, unless this court shall otherwise order.

5. That Briefs shall thereafter be filed in accordance with Rule 22 of this court.

Filed Feb. 28, 1935.

3 IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Arthur W. Cutten, *Appellant,*

vs.

Henry A. Wallace, Secretary of Agriculture, and Henry A. Wallace, Secretary of Agriculture, Homer Cummings, Attorney General, and Daniel C. Roper, Secretary of Commerce, sitting as a Commission under The Grain Futures Act, *Appellees.*

PETITION OF APPELLANT FOR REVIEW OF AN ORDER OF THE COMMISSION ENTERED FEBRUARY 12, 1935, AND ASSIGNMENT OF ERRORS.

To the Honorable, the Judges of the Circuit Court of Appeals for the Seventh Circuit:

Arthur W. Cutten, of the City of Chicago, brings this appeal against Henry A. Wallace, as Secretary of Agriculture,

and the Commision, (sometimes referred to as "The Grain Futures Commission") consisting of the said Secretary of Agriculture, the Secretary of Commerce and the Attorney General, sitting as such Commission pursuant to Section 6(b) of The Grain Futures Act, 1922, (c. 369, Sec. 6, 42 Stat. 1001; 7 U. S. C. A. Sec. 9), hereinafter called the "Commission" to review and set aside an order of the Commission, and respectfully shows unto this Court:

4 1. That your petitioner, Arthur W. Cutten, has for the period of 40 years pursued as his business occupation and as his means of livelihood the business of buying and selling grain and contracts for the future delivery thereof; that his place of business was and is in the City of Chicago, Illinois, within the aforesaid circuit; that a part of his transactions have been carried on through the Board of Trade of the City of Chicago, a corporation organized and existing under the laws of the State of Illinois; that during the years 1930 and 1931 respondent was, and now is, a member of the Chicago Board of Trade.

2. That the appellee, Henry A. Wallace is Secretary of Agriculture, and was the complainant in the proceedings before the said Commission.

3. That appellees, Henry A. Wallace, Daniel C. Roper and Homer Cummings, as respectively the Secretary of Agriculture, the Secretary of Commerce and the Attorney General, are a Commission created by Act of Congress, approved September 21, 1922, entitled: "The Grain Futures Act" and that said appellees are referred to herein as the "Commission".

4. That this petition is instituted pursuant to the provisions of Section 6(b) of said Grain Futures Act, 1922, (c. 369, Sec. 6, 42 Stat. 1001; 7 U. S. C. A. Sec. 9) and that said Section 6(b) reads as follows:

5 "If the Secretary of Agriculture has reason to believe that any person is violating any of the provisions of this chapter, or is attempting to manipulate the market price of any grain in violation of the provisions of section 7 of this chapter, or of any of the rules or regulations made pursuant to its requirements, he may serve upon such person a complaint stating his charge in that respect, to which complaint shall be attached or contained therein a notice of hearing, specifying a day and place not less than three days after the service thereof, requiring such person to show cause why an order should not be made directing that all contract markets

until further notice of the said commission refuse all trading privileges thereon to such person. Said hearing may be held in Washington, District of Columbia, or elsewhere, before the said commission, or before a referee designated by the Secretary of Agriculture, who shall cause all evidence to be reduced to writing and forthwith transmit the same to the Secretary of Agriculture as chairman of the said commission. Upon evidence received the said commission may require all contract markets to refuse such person all trading privileges thereon for such period as may be specified in said order. Notice of such order shall be sent forthwith by registered mail or delivered to the offending person and to the governing boards of said contract markets. After the issuance of the order by the commission, as aforesaid, the person against whom it is issued may obtain a review of such order or such other equitable relief as to the court may seem just by filing in the United States circuit court of appeals of the circuit in which the petitioner is doing business a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission by delivering such copy to its chairman or to any member thereof, and thereupon the commission shall forthwith certify and file in the court a transcript of the record theretofore made, including evidence received. Upon the filing of the transcript the court shall have jurisdiction to affirm, to set aside, or modify the order of the commission, and the findings of the commission as to the facts, if supported by the weight of evidence, shall in like manner be conclusive. (Sept. 21, 1922, c. 369, Sec. 6, 42 Stat. 1001.)"

6 5. That on April 9, 1934, the Secretary of Agriculture signed a complaint alleging that in the years 1930 and 1931 petitioner had violated certain of the provisions of The Grain Futures Act, and regulations made pursuant thereto, and requiring your petitioner to show cause why an order should not be entered directing all contract markets to refuse him all trading privileges thereon until further notice of the Commission created by said The Grain Futures Act; that these proceedings were entitled:

"UNITED STATES OF AMERICA.

BEFORE THE COMMISSION CREATED

BY THE GRAIN FUTURES ACT.

The Secretary of Agriculture,
Complainant,
vs.
Arthur W. Cutten,
Respondent,
} Docket Number 7"

that in accordance with the summons or notice attached to said complaint, your petitioner appeared by his counsel at a hearing held in the City of Chicago, Illinois, beginning May 14, 1934, before John C. Brooks, referee appointed by the complainant; that at the opening of the said hearing, your petitioner, by his counsel, moved to quash the complaint and all proceedings; that by agreement of counsel for the complainant, said motion was not then argued and was taken with the case, for decision by the Commission; that it was then understood and agreed that your petitioner's further participation in the hearings was without prejudice to the said motion and for the purpose of aiding the representatives of the Sec-
7 retary of Agriculture in the preparation of the record by avoiding technical objections with respect to the voluminous books and records offered in evidence; that at the close of all the evidence for the complainant, your petitioner by his counsel renewed the motion to quash in writing, moved to strike complainant's evidence, and also moved to dismiss the complaint; that pursuant to stipulation, written briefs were filed by counsel for the Secretary of Agriculture, and by counsel for your petitioner, and an oral argument had before the Commission on the 12th of January, 1935; that after said oral argument, the Commission took the proceedings under advisement.

6. That in and by said motion to quash, which was submitted both orally and in writing, your petitioner contended that the complaint instituted by said Secretary of Agriculture was not in compliance with the provisions of said Act, in that it did not allege that your petitioner was presently violating said Grain Futures Act of 1922; in and by said motion to quash, your petitioner also respectfully challenged the authority of said Commission to entertain proceedings of such char-

acter; your petitioner further contended that said Commission was usurping the functions of the judiciary in entering upon a purely punitive and judicial proceeding, as distinguished from a truly regulatory or administrative proceeding; that under the color of said purported administrative proceeding the complainant was seeking to deprive your petitioner of valuable rights without due process of law and was seeking likewise to impose a penalty upon petitioner without trial by jury in violation of the Constitution of the United States.

8 That in the case of *Board of Trade* v. *Olson,* 262 U. S. 3, the Supreme Court of the United States declared The Grain Futures Act of 1922 constitutional but specifically excepted from the range of its opinion in that case any determination of the constitutionality of Section 6(b) of The Grain Futures Act of 1922.

7. That on the 12th day of February, 1935, the Commission issued its decision in which it denied your petitioner's motions to quash, motion to strike complainant's evidence and motion to dismiss, and found that the Commission had jurisdiction to hear the case and issue its order; and in which it found that your petitioner had violated the provisions of The Grain Futures Act rendering him subject to an order of suspension from all contract markets and that at such time it entered its order in words and figures as follows:

"Accordingly, It Is Hereby Ordered that all contract markets refuse all trading privileges thereon to Arthur W. Cutten for a period of two years from March 1, 1935.

"It Is Further Ordered that a copy of this opinion, findings of fact, conclusion and order be transmitted by registered mail to the respondent and to the Secretary of each Board of Trade which is now operating as a contract market under a designation as such heretofore made by the Secretary of Agriculture."

8. That by this order, your petitioner for a period of two years from March 1, 1935, is deprived of the right to follow the business occupation which has been the means of his livelihood for the past 40 years; that your petitioner believes

9 himself aggrieved by said order of the Commission and considers the same to be erroneous, unlawful and void, and that your petitioner, being without remedy in the premises except in this Court as by statute (c. 369, Sec. 6, 42 Stat. 1001; 7 U. S. C. A. Sec. 9) in such cases made and provided, hereby petitions for:

(a) A review of said order of the Commission by this Honorable Court;

(b) That upon consummation of said review, an order be entered by this Honorable Court setting aside and holding for naught the said order of said Commission entered February 12, 1935; and

(c) An order of this Court suspending the operation, publication and enforcement of said order of February 12, 1935, until the disposition of this cause by this Honorable Court, or until the further order of this Court.

9. That in support of his said petition, and pursuant to the provisions of the statute in such cases made and provided, your petitioner assigns the following errors:

(a) The order is beyond the jurisdiction of the Commission.

(b) The order is contrary to law.

(c) The findings are contrary to law.

(d) The findings are contrary to the evidence.

(e) The findings of fact and each of them are not supported by the weight of the evidence.

(f) The findings and order are contrary to the law and the evidence.

(g) The order is unsupported by the weight of the evidence.

10 (h) The Commission erred in denying the petitioner's motions to quash the complaint and motion to dismiss the proceedings because the complaint contained no allegations stating the complainant's belief in the existence of any present or threatened violations by petitioner.

(i) The Commission erred in denying the petitioner's motions to quash the complaint and motion to dismiss the proceedings because it appears from the face of the complaint that the Secretary of Agriculture did not entertain the statutory belief jurisdictional to and required by The Grain Futures Act of 1922 for the support of such complaint and order.

(j) The Commission erred in denying the petitioner's motions to quash the complaint and motion to dismiss the proceedings because it appears from the complaint and from the evidence that the proceeding was punitive and judicial in character, was not remedial and regulatory and, therefore, neither within the jurisdiction of the Commission nor the contemplation of the statute.

(k) The order, and all the proceedings upon which the said order is based, infringes the Constitution of the United States

by usurping power which under the Constitution is reposed in and especially reserved for the judiciary, in violation of Article III of the Constitution.

(l) The order, and all the proceedings upon which the said order is based, infringes the Constitution of the United States in that it deprives your petitioner of property without due process of law, in violation of the Fifth Amendment of the Constitution of the United States.

(m) The order, and all the proceedings upon which the said order is based, infringes the Constitution of the United States in that said order has been entered by said Commission without any trial by jury, in violation of the Sixth Amendment to the Constitution of the United States.

(n) The order, and all the proceedings upon which the said order is based, infringes the Constitution of the United States in that said order has been entered by said Commission without any trial by jury, in violation of the Seventh Amendment to the Constitution of the United States.

11 (o) Section 6(b) of The Grain Futures Act of 1922 is unconstitutional and deprives your petitioner of his right to trial by jury, in violation of the Sixth and Seventh Amendments to the Constitution of the United States.

(p) Section 6(b) of The Grain Futures Act of 1922 is unconstitutional because it deprives your petitioner of property without due process of law, in violation of the Fifth Amendment of the Constitution of the United States.

(q) Section 6(b) of The Grain Futures Act of 1922 is unconstitutional because it attempts to confer upon a Commission created solely for regulatory and administrative purposes, powers and functions which under the Constitution are reposed in and especially reserved for the judiciary, in violation of Article III of the Constitution.

(r) Section 6(b) of The Grain Futures Act of 1922, does not contemplate nor confer upon the Commission jurisdiction to hear and determine proceedings of the kind and character here instituted and carried on before the Commission.

(s) The Commission erred in finding that your petitioner owned or controlled each of the accounts carried in the names of relatives and associates.

(t) The Commission erred in finding that your petitioner concealed his position in the market.

(u) The Commission erred in finding that the petitioner's purpose in the alleged concealment of his position in the market was to manipulate the market price of grain and thereby make large profits.

(v) The Commission erred in finding that your petitioner attempted to manipulate the market price of grain.

(w) The Commission erred in finding that your petitioner made false reports.

(x) The Commission erred in finding that petitioner's conduct, as disclosed by the record, constituted a violation of The Grain Futures Act and the rules and regulations made pursuant thereto.

12 (y) The evidence received does not support the finding of said Commission.

(z) The Commission erred in denying the petitioner's motion to strike certain of the complainant's evidence.

(aa) The Commission errer in denying the petitioner's motion to strike all of the evidence.

(bb) The Commission erred in denying the petitioner's motion to dismiss the complaint.

(cc) The Commission erred in denying the petitioner's motions to quash the complaint and all proceedings instituted thereunder.

10. That your petitioner prays for the following relief:

(a) That this Honorable Court exercise its jurisdiction over the parties to and subject matter of this petition.

(b) That this Honorable Court review the findings and order of the Commission in this cause and enter a judgment, decree or order in this Honorable Court setting aside and holding for naught the order of the said Commission entered on the 12th day of February, A. D. 1935.

(c) That this Honorable Court grant unto this petitioner such other and further relief, legal or equitable, as this Court shall deem meet, just and proper.

(d) That the operation, publication and enforcement of said order be stayed pending the disposition of this cause, or until the further order of this Court.

Dated at Chicago, Illinois, this 26th day of February, A. D. 1935.

ARTHUR W. CUTTEN
Appellant,
231 South La Salle Street,
Chicago, Illinois.

ORVILLE J. TAYLOR
JAMES J. MAGNER
Attorneys for Appellant,
Room 1200, 231 South LaSalle Street,
Chicago, Illinois.

13 United States of America
State of Illinois } ss.
County of Cook

ARTHUR W. CUTTEN, being first duly sworn, deposes and says that he is the petitioner in the above entitled cause; that affiant has read the above and foregoing petition by him subscribed, and that the facts alleged in the foregoing petition are within the knowledge of affiant, and that said facts set out in said petition are true.

ARTHUR W. CUTTEN

Subscribed and sworn to before me this 26 day of February, A. D. 1935.

GEORGE B. CROCKETT, JR.
(Seal) *Notary Public.*

My commission expires October 18, 1938.

14 Endorsed: 5467 In the United States Circuit Court of Appeals for the Seventh Circuit. Arthur W. Cutten, Appellant, vs. Henry A. Wallace, Secretary of Agriculture, and Henry A. Wallace, Secretary of Agriculture, Homer Cummings, Attorney General, and Daniel C. Roper, Secretary of Commerce, sitting as a Commission under The Grain Futures Act, Appellees. Petition of Appellant for Review of an Order of the Commission entered February 12, 1935, and Assignment of Errors. Filed Feb. 23, 1935 Frederick G. Campbell, Clerk. Orville J. Taylor, James J. Magner, Attorneys for Appellant, 231 South La Salle Street, Chicago. Telephone State 6070.

30 On April 11, 1934, the Secretary of Agriculture caused to be served on Arthur W. Cutten, of Chicago, Illinois, a Complaint, as follows:

COMPLAINT.

"Whereas, the Secretary of Agriculture has reason to believe that Arthur W. Cutten, a member of the Board of Trade of the City of Chicago, has violated the Act of Congress approved September 21, 1922 (42 Stat. 998), known as the Grain Futures Act, and the rules and regulations made and promulgated by the Secretary of Agriculture and the Grain Futures

Administration pursuant thereto, he therefore initiates this complaint, and alleges:

"Par. 1. The Board of Trade of the City of Chicago (hereinafter referred to as the "Board of Trade") is now and was during the period covered herein, a duly designated contract market, under the Grain Futures Act.

"Par. 2. Arthur W. Cutten is now and was continuously during the period of time covered herein a member of the Board of Trade. During the period covered herein, the respondent was required by regulations made pursuant to the Grain Futures Act, to report to the Grain Futures Administration his net position in futures owned or controlled by him, long or short, by grain and by future, when he had net open commitments in any one future equal to or in excess of 500,000 bushels. Respondent was also required by said regula-
31 tions to report to the Grain Futures Administration daily trades made by him on the Board of Trade, in futures in which he owned or controlled open commitments equal to or in excess of 500,000 bushels.

Par. 3. The respondent, during the years 1930 and 1931, conspired and colluded with various persons and grain firms of the Board of Trade to conceal his trading and position in the market from the Grain Futures Administration. In furtherance of said conspiracy, respondent made inaccurate, incorrect and false reports of his position in the market to the Grain Futures Administration, failed and refused to report accurately and correctly his position in the market and trades made by him, in accordance with the Grain Futures Act and regulations and reporting requirements made pursuant thereto; caused and procured various grain firms and persons by and through whom his trades on the Board of Trade were made, to keep false records and to make false reports to the Grain Futures Administration Respondent caused said persons and firms to split and divide his account into several sections and to carry the same under various names and symbols and by this means concealed and covered up his trades. The respondent, during all of this period, by means of false reports made by himself and those with whom he conspired, and by means of false records kept by those through whom he traded in setting up fictitious or "dummy" accounts, concealed his trades and position in the market from the Grain Futures Administration, and attempted to manipulate the price of grain.

During the years 1930 and 1931, respondent sold wheat

futures in excess of 100,000,000 bushels; he sold wheat futures short in 1930 in excess of 37,000,000 bushels, and in 1931
32 in excess of 36,000,000 bushels. He attained a maximum short position in wheat futures in 1930 of 7,525,000 bushels on June 24, he attained a maximum short position in 1931 of 6,770,000 bushels on April 10. In the year 1930, during the time he had an open position in the market, he was short 79 per cent of the time, and in the year 1931, during the time he had an open position in the market, he was short 89 per cent of the time. The respondent had an open position in the market on 582 trading days during the years 1930 and 1931 and he was short on 493 of these days. During the two-year period covered by these heavy selling operations the price of wheat futures on the Board of Trade declined from $1.34 5/8 per bushel for the July future on January 2, 1930, to $.56 1/4 per bushel for the July future on December 31, 1931, a decline of more than 78 cents per bushel.

Par. 4. On January 5, 1931, respondent reported in writing to the Grain Futures Administration at Chicago, Illinois, his net total open commitments in wheat futures contracts on the Board of Trade to be 600,000 bushels July wheat short; said report was inaccurate, incorrect and false, in that on said date respondent was short on the Board of Trade approximately 2,000,000 bushels July wheat through the various firms with whom he had colluded and conspired to conceal his short position from the Grain Futures Administration.

Par. 5. On January 6, 1931, respondent reported in writing to the Grain Futures Administration at Chicago, Illinois, his net total open commitments in wheat futures contracts on the Board of Trade to be 600,000 bushels July wheat short; said report was inaccurate, incorrect and false, in that on said date respondent was short on the Board of Trade approximately 2,495,000 bushels July wheat through the various firms with whom he had colluded and conspired to
33 conceal his short position from the Grain Futures Administration.

Par. 6. On January 7, 1931, respondent reported in writing to the Grain Futures Administration at Chicago, Illinois, his net total open commitments in wheat futures contracts on the Board of Trade to be 320,000 bushels July wheat short; said report was inaccurate, incorrect and false, in that on said date respondent was short on the Board of Trade approximately 2,115,000 bushels July wheat through

the various firms with whom he had colluded and conspired to conceal his short position from the Grain Futures Administration.

Par. 7. On January 16, 1931, respondent reported in writing to the Grain Futures Administration at Chicago, Illinois, that he had open commitments on the Board of Trade in July wheat futures; said report was inaccurate, incorrect and false in that on said date respondent owned and controlled July wheat futures short on the Board of Trade to the approximate amount of 2,700,000 bushels through the various firms with whom he had colluded and conspired to conceal his short position from the Grain Futures Administration.

Par. 8. On January 19, 1931, respondent reported in writing to the Grain Futures Administration at Chicago, Illinois, his net total open commitments in wheat futures contracts on the Board of Trade to be 600,000 bushels July wheat short; said report was inaccurate, incorrect and false, in that on said date respondent was short on the Board of Trade approximately 3,245,000 bushels July wheat through the various firms with whom he had colluded and conspired to conceal his short position from the Grain Futures Administration.

Par. 9. On January 20, 1931, respondent reported in writing to the Grain Futures Administration at Chicago, Illi-
34 nois, his net total open commitments in wheat futures contracts on the Board of Trade to be 605,000 bushels July wheat short; said report was inaccurate, incorrect and false, in that on said date respondent was short on the Board of Trade approximately 3,175,000 bushels July wheat through the various firms with whom he had colluded and conspired to conceal his short position from the Grain Futures Administration.

Par. 10. On January 24, 1931, respondent reported in writing to the Grain Futures Administration at Chicago, Illinois, his net total open commitments in wheat futures contracts on the Board of Trade to be 705,000 bushels July wheat short; said report was inaccurate, incorrect and false, in that on said date respondent was short on the Board of Trade approximately 3,275,000 bushels July wheat through the various firms with whom he had colluded and conspired to conceal his short position from the Grain Futures Administration.

Par. 11. On January 26, 1931, respondent reported in writing to the Grain Futures Administration at Chicago, Illi-

nois, his net total open commitments in wheat futures contracts on the Board of Trade to be 705,000 bushels July wheat short; said report was inaccurate, incorrect and false, in that on said date respondent was short on the Board of Trade approximately 3,575,000 bushels July wheat through the various firms with whom he had colluded and conspired to conceal his short position from the grain Futures Administration.

Par. 12. On February 2, 1931, respondent reported in writing to the Grain Futures Administration at Chicago, Illinois, his net total open commitments in wheat futures contracts on the Board of Trade to be 705,000 bushels July wheat short; said report was inaccurate, incorrect and false, in
35 that on said date respondent was short on the Board of Trade approximately 3,875,000 bushels July wheat through the various firms with whom he had colluded and conspired to conceal his short position from the Grain Futures Administration.

Par. 13. On February 5, 1931, respondent reported in writing to the Grain Futures Administration at Chicago, Illinois, his net total open commitments in wheat futures contracts on the Board of Trade to be 505,000 bushels July wheat short; said report was inaccurate, incorrect and false, in that on said date respondent was short on the Board of Trade approximately 2,205,000 bushels July wheat through the various firms with whom he had colluded and conspired to conceal his short position from the Grain Futures Administration.

Par. 14. On February 7, 1931, respondent reported in writing to the Grain Futures Administration at Chicago, Illinois, his net total open commitments in wheat futures contracts on the Board of Trade to be 505,000 bushels July wheat short; said report was inaccurate, incorrect and false, in that on said date respondent was short on the Board of Trade approximately 3,005,000 bushels July wheat through the various firms with whom he had colluded and conspired to conceal his short position from the Grain Futures Administration.

Par. 15. On February 9, 1931, respondent reported in writing to the Grain Futures Administration at Chicago, Illinois, his net total open commitments in wheat futures contracts on the Board of Trade to be 150,000 bushels July wheat short; said report was inaccurate, incorrect and false, in that on said date respondent was short on the Board of Trade approximately 2,405,000 bushels July wheat through the

various firms with whom he had colluded and conspired to conceal his short position from the Grain Futures Administration.

36 Par. 16. On February 27, 1931, respondent reported in writing to the Grain Futures Administration at Chicago, Illinois, that he had no open commitments in wheat futures contracts on the Board of Trade; said report was inaccurate, incorrect and false, in that on said date respondent was approximately 2,400,000 bushels July wheat short and approximately 970,000 bushels September wheat short on the Board of Trade through the various firms with whom he had colluded and conspired to conceal his short position from the Grain Futures Administration.

Par. 17. On March 14, 1931, respondent reported in writing to the Grain Futures Administration at Chicago, Illinois, that he had no open commitments in wheat futures contracts on the Board of Trade; said report was inaccurate, incorrect and false, in that on said date respondent was approximately 2,700,000 bushels July wheat short and approximately 1,670,000 bushels September wheat short on the Board of Trade through the various firms with whom he had colluded and conspired to conceal his short position from the Grain Futures Administration.

Par. 18. On March 18, 1931, respondent reported in writing to the Grain Futures Administration at Chicago, Illinois, that he had no open commitments in wheat futures contracts on the Board of Trade; said report was inaccurate, incorrect and false in that on said date respondent was approximately 2,800,000 bushels July wheat short and approximately 1,670,000 bushels September wheat short on the Board of Trade through the various firms with whom he had colluded and conspired to conceal his short position from the Grain Futures Administration.

Par. 19. On November 3, 1931, respondent reported in writing to the Grain Futures Administration at Chicago, Illinois, that he had a net long position of 500,000 bushels

37 May wheat and that he had no open commitments in December wheat on the Board of Trade; said report was inaccurate, incorrect and false in that on said date respondent owned and controlled May wheat futures long to the net amount of 2,690,000 bushels and December wheat futures short in the amount of 545,000 bushels through the various firms with whom he had colluded and conspired to conceal his position from the Grain Futures Administration.

Par. 20. On November 20, 1931, respondent reported in writing to the Grain Futures Administration at Chicago, Illinois, that he had short open commitments on the Board of Trade of 100,000 bushels May wheat futures; said report was inaccurate, incorrect and false in that on said date respondent owned and controlled 925,000 bushels May wheat short through the various firms with whom he had colluded and conspired to conceal his short position from the Grain Futures Administration.

Par. 21. On March 23, 1932, the respondent filed written reports with the Grain Futures Administration at Chicago, Illinois, purporting to disclose his net open long and short commitments on the Board of Trade as of November 30, December 1, 5, 7, 8, 9, 14, 16, 18, 19, 21, 22, 23, 24, and 29, 1931. He reported his net total open commitments in wheat futures on the Board of Trade as of November 30, 1931, to be 1,385,000 bushels May wheat short; said report was inaccurate, incorrect and false in that on said date respondent owned and controlled May wheat futures on the Board of Trade to the approximate total of 2,920,000 bushels short.

He reported his net total open commitments in wheat futures as of December 1, 1931, to be 785,000 bushels May wheat short; said report was inaccurate, incorrect and false in that on said date respondent owned and controlled May wheat futures on the Board of Trade in the amount of 1,570,000 bushels short.

38 He reported his net total open commitments in wheat futures as of December 5, 1931, to be 830,000 bushels May wheat short; said report was inaccurate, incorrect and false in that on said date respondent owned and controlled May wheat futures on the Board of Trade in the amount of 1,340,000 bushels short.

He reported his net total open commitments in wheat futures as of December 7, 1931, to be 1,030,000 bushels May wheat short; said report was inaccurate, incorrect and false in that on said date respondent owned and controlled May wheat futures on the Board of Trade in the amount of 1,540,000 bushels short.

He reported to the Grain Futures Administration at Chicago, Illinois, his net total open commitments in wheat futures as of December 8, 1931, to be 730,000 bushels May wheat short; said report was incorrect, inaccurate and false in that on said date respondent owned and controlled May wheat

futures on the Board of Trade in the amount of 1,240,000 bushels short.

He reported his net total open commitments in wheat futures on the Board of Trade as of December 9, 1931, to be 1,530,000 bushels May wheat short; said report was inaccurate, incorrect and false in that on said date respondent owned and controlled May wheat futures on the Board of Trade in the amount of 2,140,000 bushels short.

He reported to the Grain Futures Administration at Chicago, Illinois, his net total open commitments in wheat futures as of December 14, 1931, to be 1,430,000 bushels May wheat short; said report was inaccurate, incorrect and false in that on said date respondent owned and controlled May wheat futures on the Board of Trade in the amount of 2,040,000 bushels short.

He reported to the Grain Futures Administration at
39 Chicago, Illinois, his net total open commitments in wheat futures as of December 16, 1931, to be 1,230,000 bushels May wheat short; said report was inaccurate, incorrect and false in that on said date respondent owned and controlled May wheat futures on the Board of Trade in the amount of 1,640,000 bushels short.

He reported to the Grain Futures Administration at Chicago, Illinois, his net total open commitments in wheat futures as of December 18, 1931, to be 930,000 bushels May wheat short; said report was inaccurate, incorrect and false in that on said date respondent owned and controlled May wheat futures on the Board of Trade in the amount of 1,340,000 bushels short.

He reported to the Grain Futures Administration at Chicago, Illinois, his net total open commitments in wheat futures as of December 19, 1931, to be 930,000 bushels May wheat short; said report was inaccurate, incorrect and false in that on said date respondent owned and controlled May wheat futures on the Board of Trade in the amount of 1,340,000 bushels short.

He reported to the Grain Futures Administration at Chicago, Illinois, his net total open commitments in wheat futures as of December 21, 1931, to be 1,230,000 bushels May wheat short; said report was inaccurate, incorrect and false in that on said date respondent owned and controlled May wheat futures on the Board of Trade in the amount of 1,740,000 bushels short.

He reported his net total open commitments in wheat fu-

tures as of December 22, 1931, to be 1,530,000 bushels May wheat short; said report was inaccurate, incorrect and false in that on said date respondent owned and controlled
40 May wheat futures on the Board of Trade in the amount of 1,940,000 bushels short.

He reported his net total open commitments in wheat futures as of December 23, 1931, to be 1,630,000 bushels May wheat short; said report was inaccurate, incorrect and false in that on said date respondent owned and controlled May wheat futures on the Board of Trade in the amount of 2,040,000 bushels short.

He reported his net total open commitments in wheat futures as of December 24, 1931, to be 1,695,000 bushels May wheat short; said report was inaccurate, incorrect and false in that on said date respondent owned and controlled May wheat futures on the Board of Trade in the amount of 2,105,000 bushels short.

He reported his net total open commitments in wheat futures as of December 29, 1931, to be 1,795,000 bushels May wheat short; said report was inaccurate, incorrect and false in that on said date respondent owned and controlled May wheat futures on the Board of Trade in the amount of 2,205,000 bushels short.

Par. 22. From January 16, 1930, to February 25, 1930, the respondent owned and controlled contracts in one or more wheat futures equal to or in excess of 500,000 bushels acquired on the Board of Trade through the various commission firms with whom he had colluded and conspired to conceal his position in the market from the Grain Futures Administration. On January 16, 17, 20, 24, 27, 29, 31, February 1, 3, 4, 5, 6, 7, 11, 13, 14, 15, 19, 24, 25, and 26, 1930 respondent made trades on the Board of Trade in wheat futures in which he held or controlled open commitments equal to or in excess of 500,000 bushels through said firms and failed and refused to report said open commitments and trades to the Grain Futures Administration.

41 Par. 23. From March 6, 1930, to July 15, 1930, the respondent owned and controlled contracts in one or more wheat futures equal to or in excess of 500,000 bushels acquired on the Board of Trade through the various commission firms with whom he had colluded and conspired to conceal his position in the market from the Grain Futures Administration. On March 6, 10, 11, 12, 13, 22, 24, 25, 28, April 2, 3, 4, 9, 12, 16, 19, 21, 22, 23, 24, 28, 29, 30, May 3, 6,

7, 8, 9, 10, 12, 15, 20, 22, 26, June 2, 7, 10, 11, 12, 13, 14, 16, 18, 20, 21, 23, 24, 26, 27, 30, July 1, 2, 3, 7, 8, 9, 10, 11, 14, 15, and 16, 1930, respondent made trades on the Board of Trade in wheat futures in which he held or controlled open commitments equal to or in excess of 500,000 bushels through said firms and failed and refused to report said commitments and trades to the Grain Futures Administration.

Par. 24. From July 17, 1930, to July 26, 1930, respondent owned and controlled contracts in one or more wheat futures equal to or in excess of 500,000 bushels acquired on the Board of Trade through the various commission firms with whom he had colluded and conspired to conceal his position in the market from the Grain Futures Administration. On July 17, 18, 19, 21, 25 and 28, 1930, respondent made trades on the Board of Trade in wheat futures in which he held or controlled open commitments equal to or in excess of 500,000 bushels through said firms and failed and refused to report said commitments and trades to the Grain Futures Administration.

Par. 25. From July 30, 1930, to August 11, 1930, the respondent owned and controlled contracts in one or more wheat futures equal to or in excess of 500,000 bushels acquired on the Board of Trade through the various commission firms with whom he had colluded and conspired to conceal his position in the market from the Grain Futures Admin-
42 istration. On July 30, August 4, 5, 6, 7, 8, 9, 11 and 12, 1930, respondent made trades on the Board of Trade in wheat futures in which he held or controlled open commitments equal to or in excess of 500,000 bushels through said firms and failed and refused to report said open commitments and trades to the Grain Futures Administration.

Par. 26. From August 15, 1930, to September 3, 1930, the respondent owned and controlled contracts in one or more wheat futures equal to or in excess of 500,000 bushels acquired on the Board of Trade through the various commission firms with whom he had colluded and conspired to conceal his position in the market from the Grain Futures Administration. On August 15, 18, 20, 23, 25, 26, 27, 28, September 2 and 4, 1930, respondent made trades on the Board of Trade in wheat futures in which he held or controlled open commitments equal to or in excess of 500,000 bushels through said firms and failed and refused to report said open commitments and trades to the Grain Futures Administration.

Par. 27. From September 11, 1930, to September 15, 1930, the respondent owned and controlled contracts in one or more wheat futures equal to or in excess of 500,000 bushels, acquired on the Board of Trade through the various commission firms with whom he had colluded and conspired to conceal his position in the market from the Grain Futures Administration. On September 11, 15 and 16, 1930, respondent made trades on the Board of Trade in wheat futures in which he held or controlled open commitments equal to or in excess of 500,000 bushels through said firms and failed and refused to report said open commitments and trades to the Grain Futures Administration.

Par. 28. From September 18, 1930, to September 30, 1930, the respondent owned and controlled contracts in one or
43 more wheat futures equal to or in excess of 500,000 bushels acquired on the Board of Trade through the various commission firms with whom he had colluded and conspired to conceal his position in the market from the Grain Futures Administration. On September 18, 19, 20, 24, 26, 27, 29, 30, and October 1, 1930, respondent made trades in wheat futures in which he held or controlled open commitments equal to or in excess of 500,000 bushels through said firms and failed and refused to report said open commitments and trades to the Grain Futures Administration.

Par. 29. From October 23, 1930, to December 31, 1930, the respondent owned and controlled contracts in one or more wheat futures equal to or in excess of 500,000 bushels acquired on the Board of Trade through the various commission firms with whom he had colluded and conspired to conceal his position in the market from the Grain Futures Administration. On October 23, 25, 27, 28, 29, 31, November 1, 3, 5, 6, 7, 12, 13, 14, 17, 18, 19, December 6, 8, 10, 11, 13, 15, 16, 17, 18, 20, 22, 26 and 29, 1930, respondent made trades on the Board of Trade in wheat futures in which he held or controlled open commitments equal to or in excess of 500,000 bushels through said firms and failed and refused to report said open commitments and trades to the Grain Futures Administration.

Par. 30. On January 2, and 3, 1931, the respondent owned and controlled contracts in one or more wheat futures in excess of 500,000 bushels acquired on the Board of Trade through the various commission firms with whom he had colluded and conspired to conceal his position in the market from the Grain Futures Administration. On January 2, 1931, he made trades in wheat futures in which he held or

controlled open commitments equaling or in excess of 500,000 bushels through said firms, and failed and refused to report said open commitments and trades to the Grain Futures Administration.

44 Par. 31. From January 8, 1931, to January 15, 1931, the respondent owned and controlled contracts in one or more wheat futures in excess of 500,000 bushels acquired on the Board of Trade through the various commission firms with whom he had colluded and conspired to conceal his position in the market from the Grain Futures Administration. On January 8, 12, 14 and 15, 1931, he made trades in wheat futures in which he held or controlled open commitments equaling or in excess of 500,000 bushels through said firms and failed and refused to report said open commitments and trades to the Grain Futures Administration.

Par. 32. On January 17, 1931, the respondent owned and controlled contracts in one or more wheat futures in excess of 500,000 bushels, acquired on the Board of Trade through the various commission firms with whom he had colluded and conspired to conceal his position in the market from the Grain Futures Administration. On January 17, 1931, he made trades in wheat futures in which he held or controlled open commitments equaling or in excess of 500,000 bushels through said firms and failed and refused to report said open commitments and trades to the Grain Futures Administration.

Par. 33. From January 21, 1931, to January 23, 1931, the respondent owned and controlled contracts in one or more wheat futures in excess of 500,000 bushels, acquired on the Board of Trade through the various commission firms with whom he had colluded and conspired to conceal his position in the market from the Grain Futures Administration. On January 23, 1931, he made trades in wheat futures in which he held or controlled open commitments equaling or in excess of 500,000 bushels through said firms and failed and refused to report said open commitments and trades to the Grain Futures Administration.

45 Par. 34. From January 27, 1931 to January 31, 1931, the respondent owned and controlled contracts in one or more wheat futures in excess of 500,000 bushels, acquired on the Board of Trade through the various commission firms with whom he had colluded and conspired to conceal his position in the market from the Grain Futures Administration. On January 31, 1931, he made trades in wheat futures in

which he held or controlled open commitments equaling or in excess of 500,000 bushels through said firms and failed and refused to report said open commitments and trades to the Grain Futures Administration.

Par. 35. On February 3 and 4, 1931, the respondent owned and controlled contracts in one or more wheat futures in excess of 500,000 bushels, acquired on the Board of Trade through the various commission firms with whom he had colluded and conspired to conceal his position in the market from the Grain Futures Administration. On February 3, 1931, he made trades in wheat futures in which he held or controlled open commitments equaling or in excess of 500,000 bushels through said firms and failed and refused to report said open commitments and trades to the Grain Futures Administration.

Par. 36. From February 10, 1931 to February 26, 1931, the respondent owned and controlled contracts in one or more wheat futures in excess of 500,000 bushels, acquired on the Board of Trade through the various commission firms with whom he had colluded and conspired to conceal his position in the market from the Grain Futures Administration. On February 10, 14, 16, 19, 20 and 26, 1931, he made trades in wheat futures in which he held or controlled open commitments equaling or in excess of 500,000 bushels through said firms and failed and refused to report said open commitments and trades to the Grain Futures Administration.

46 Par. 37. From February 28, 1931 to March 13, 1931, the respondent owned and controlled contracts in one or more wheat futures in excess of 500,000 bushels acquired on the Board of Trade through the various commission firms with whom he had colluded and conspired to conceal his position in the market from the Grain Futures Administration. On February 28, March 3, 7, 10, 11 and 13, 1931, he made trades in wheat futures in which he held or controlled open commitments equaling or in excess of 500,000 bushels through said firms and failed and refused to report said open commitments and trades to the Grain Futures Administration.

Par. 38. From March 19, 1931 to July 15, 1931, the respondent owned and controlled contracts in one or more wheat futures in excess of 500,000 bushels, acquired on the Board of Trade through the various commission firms with whom he had colluded and conspired to conceal his position in the market from the Grain Futures Administration. On

March 19, 20, 23, 24, 25, 28, 30, April 1, 2, 4, 10, 13, 14, 15, 16, 17, 18, 20, 21, 23, 24, 25, 27, 28, 30, May 1, 4, 16, 18, 20, 21, 23, 26, June 3, 4, 5, 8, 10, 11, 12, 18, 20, 22, 23, 24, 26, 27, 28, 30, July 1, 3, 6, 7, 8, 9, 10, 11, 13, 14, 15 and 16, 1931, he made trades in wheat futures in which he held or controlled open commitments equaling or in excess of 500,000 bushels through said firms and failed and refused to report said open commitments and trades to the Grain Futures Administration.

Par. 39. From July 21, 1931 to August 17, 1931, the respondent owned and controlled contracts in one or more wheat futures in excess of 500,000 bushels, acquired on the Board of Trade through the various commission firms with whom he had colluded and conspired to conceal his position in the market from the Grain Futures Administration. On July 21, 22, 24, 27, 28, 29, 31, August 1, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 17 and 18, 1931, he made trades in wheat futures in which he held or controlled open commitments equaling or in excess of 500,000 bushels through said firms and failed and refused to report said open commitments and trades to the Grain Futures Administration.

Par. 40. On August 20, 1931, the respondent owned and controlled contracts in one or more wheat futures in excess of 500,000 bushels, acquired on the Board of Trade through the various commission firms with whom he had colluded and conspired to conceal his position in the market from the Grain Futures Administration. On August 20, 1931, he made trades in wheat futures in which he held or controlled open commitments equaling or in excess of 500,000 bushels through said firms and failed and refused to report said open commitments and trades to the Grain Futures Administration.

Par. 41. From August 24, 1931 to November 2, 1931, the respondent owned and controlled contracts in one or more wheat futures in excess of 500,000 bushels, acquired on the Board of Trade through the various commission firms with whom he had colluded and conspired to conceal his position in the market from the Grain Futures Administration. On August 24, 25, 29, 31, September 3, 8, 9, 11, 12, 14, 15, 18, 23, 24, 25, 26, 28, 29, 30 and 31, 1931, he made trades in wheat futures in which he held or controlled open commitments equaling or in excess of 500,000 bushels through said firms and failed and refused to report said open commitments and trades to the Grain Futures Administration.

Par. 42. From November 6, 1931, to November 13, 1931, the respondent owned and controlled contracts in one or

more wheat futures in excess of 500,000 bushels, ac-
48 quired on the Board of Trade through the various commission firms with whom he had colluded and conspired to conceal his position in the market from the Grain Futures Administration. On November 13 and 14 he made trades in wheat futures in which he held or controlled open commitments equaling or in excess of 500,000 bushels through said firms and failed and refused to report said open commitments and trades to the Grain Futures Administration.

Par. 43. From November 21, 1931 to December 31, 1931, the respondent owned and controlled contracts in one or more wheat futures in excess of 500,000 bushels, acquired on the Board of Trade through the various commission firms with whom he had colluded and conspired to conceal his position in the market from the Grain Futures Administration. On November 21, 23, 24, 25, 28, 30, December 1, 3, 4, 5, 7, 8, 9, 10, 14, 16, 18, 21, 22, 23, 24 and 29, 1931, he made trades in wheat futures in which he held or controlled open commitments equaling or in excess of 500,000 bushels through said firms and failed and refused to report said open commitments and trades to the Grain Futures Administration.

Par. 44. On January 25, 1930, the respondent had a short position in wheat futures on the Board of Trade amounting to 1,050,000 bushels. Between January 25, 1930 and February 25, 1930, respondent sold wheat futures aggregating 2,710,000 bushels, increasing his short position to 5,760,000 bushels. On January 25, 1930, the closing price of the May future on the Board of Trade was $1.25\frac{5}{8}$; on February 25, 1930, the closing price of this future was $1.08\frac{1}{2}$, a decline of more than 18 cents per bushel.

Par. 45. On April 10, 1930, the respondent had a long position in wheat futures on the Board of Trade amounting to 1,800,000 bushels. Between April 10, 1930 and April
49 26, 1930, respondent sold wheat futures aggregating 3,210,000 bushels, thus reversing his long position and attaining a short position of 1,410,000 bushels. On April 10, 1930, the closing price of the May wheat future on the Board of Trade was $1.14\frac{1}{8}$. On April 26, 1930, the closing price of this future was $1.02\frac{7}{8}$, a decline of 12 cents per bushel.

Par. 46. On June 12, 1930, the respondent had a short position in wheat futures on the Board of Trade amounting to 2,475,000 bushels. Between June 12, 1930, and June 21, 1930, respondent sold wheat futures aggregating 4,650,000 bushels. On June 12, 1930, the closing price of the July wheat future on the Board of Trade was $1.03. On June

21, 1930 the closing price of this future was $.92½, a decline of more than 10 cents per bushel.

Par. 47. On November 12, 1931, respondent had a long position in wheat futures on the Board of Trade amounting to 2,845,000 bushels. Between November 12, 1931 and November 27, 1931, respondent sold wheat futures aggregating 6,805,000 bushels, thus reversing his long position and attaining a short position of 3,960,000 bushels. This change in position took place during twelve trading days. On November 12, 1931, the closing price of the December future on the Board of Trade was $.61¼. On November 27, 1931, the closing price of this future was $.52⅝, a decline of approximately 8 cents per bushel.

Wherefore, the said respondent, Arthur W. Cutten, is hereby notified to be and appear at a hearing to be held at 10:00 o'clock a. m., central standard time, on the 14th day of May, 1934, at Room 713, New Appraisers Stores Bldg., Chicago, Illinois, before a referee designated for the purpose by the Secretary of Agriculture, and then and there
50 show cause, if any there be, why an order should not be made directing that all contract markets, until future notice of the Commission provided by said Grain Futures Act, refuse said respondent all trading privileges thereon.

In Witness Whereof, the Secretary of Agriculture has hereunto set his hand and caused the official seal of the Department of Agriculture to be affixed in the City of Washington, District of Columbia, this the ninth day of April, 1934.

H. A. WALLACE
Secretary of Agriculture.

ORDER.

Entered Apr. 9, 1934.

It Is Ordered that the foregoing complaint and notice of hearing be served on Arthur W. Cutten by delivering a true copy of this complaint and notice of hearing to said respondent personally, at least five days prior to the date herein set for hearing.

In Witness Whereof, the Secretary of Agriculture has hereunto set his hand and caused the official seal of the Department of Agriculture to be affixed in the City of Washington, District of Columbia, this the ninth day of April, 1934.

H. A. WALLACE
Secretary of Agriculture.

51 On May 14, 1934, at the Customs Court Room, Chicago, Illinois, before John C. Brooke, duly designated Referee, the following proceedings were had:

Leo. F. Tierney appeared as counsel for Complainant.

Orville J. Taylor, and James J. Magner, as counsel for Respondent.

Referee: Are you ready, Mr. Tierney?

Mr. Tierney: Yes, if you please. At this time I want to make a short statement to indicate what we expect to show by our witnesses in this case. The complaint is filed under the Grain Futures Act and in it Mr. Cutten is charged with violation of the Act and the regulations pursuant thereto. He is charged with failing to report his open commitments on the Chicago Board of Trade. It will appear here that the Board of Trade is a contract market, duly designated as such; that Mr. Cutten during the years of 1930 and 1931, and at the present time, is and was a member of this contract market. The evidence will show that during the years 1930 and 1931 Mr. Cutten, with full knowledge of the requirements, conspired and colluded with certain grain firms of Chicago and the Board of Trade to conceal his position in the market in an attempt to manipulate the price of grain; that in 1930 he made no reports whatsoever of his position in the market, when he was required to do so. In 1931 he made only gestures at reports. At times he made some reports which were false and at other times when he was required to report he made no reports at all. (Tr. 2)

The evidence will show that he traded with Bartlett-Frazier Company, with which firm he owned and controlled five
52 accounts; with Clement, Curtis & Company, through which firm he owned and controlled seven accounts; with Jackson Brothers, Boesel & Company, with which firm he had some eight accounts; with F. B. Keech & Company, some six accounts; James Kidston & Company, two accounts; C. D. Robbins & Company, two accounts; and the Uhlmann Grain Company, two accounts.

In 1931 he traded with William J. Springer, also a member of the Board of Trade, with whom he had two accounts. The evidence will show that in the furtherance of his conspiracy the firms mentioned, with the exception of the James Kidston Company, failed to report his position to the Grain Futures Administration when they were required to do so;

and that they divided his accounts in wheat into many sections and with design kept the accounts under 500,000 bushels. This case involves primarily transactions in wheat futures. The evidence will disclose that during this period of 1930 and 1931 Mr. Cutten was a tremendous short seller; that a vast portion of the time, I think some 80 per cent, he was a short seller; that he dealt in futures contracts involving over a hundred million bushels. (Tr. 3)

The Government does not contend or claim that during this period of 1930 and 1931, when commodity prices were falling, all commodity prices, that Mr. Cutten was to blame for the crash. It will appear, however, in the evidence that during this period of decline, steady decline of the market, there are some strange coincidences of Mr. Cutten's large sales and sudden price fluctuations. We expect to show that. We expect to show that Mr. Cutten was fully aware of the reporting requirements and that he deliberately and designedly and with the aid of and in collusion with, the various grain firms through whom he dealt, concealed his position in the market. He made false reports, and failed to re-
53 port when he knew he should report. In a general way, that is the Government's case.

Mr. Taylor: May it please the Referee, I want to refrain from making any statement until the conclusion of the Government's case. We want to present at this time a motion to quash the complaint which we understand under the practice in proceedings of this character will go with the record to the Commission and which will be ultimately passed upon by the Commission. However, we feel that in the proper protection of the interests of our client, we should preserve his position and our position with reference to the motion to quash and that (Tr. 4) being the case I would like to read a formal statement and present our motion to quash the complaint.

Mr. Taylor: We want to cooperate with the Department of Agriculture in every degree possible in the presentation of this proof, but if it cannot be agreed that all of our legal points relating to our motion to quash can be conserved and preserved, then we might very properly have to insist that we first have a determination on our motion to quash. We are not urging that and that is the reason we would like, rather than to rely upon my memory in the presentation of our motion to quash, I would like to refer to my manuscript.

We now move that the complaint on which these proceed-

ings are brought be quashed and that these proceedings, including the appointment of the referee, the sending of notice under the complaint and any and all action heretofore taken and hereafter taken with respect to said "complaint and notice of hearing under the Grain Futures Act" be held for naught. We reserve on behalf of the respondent, Mr. Cutten, such legal grounds and points as may represent themselves to us as the hearing ensues and as may be developed from the testimony that is here adduced. (Tr. 5)

In support of our motion to quash made in behalf of Mr. Cutten, the respondent, we advance the following points:

1. The sections of the Grain Futures Act of 1922, under which these proceedings are brought, in so far as those sections of said Act are relied upon to give validity and effect to these proceedings, infringe the Constitution of the United States in the following respects:

A. That they deprive the respondent of his constitutional right of trial by jury.

B. That they are in violation of the due process clause of the Constitution.

C. That they confer upon a commission created solely for administrative purposes, powers and functions which under the Constitution are reposed in and expressly reserved for the Judiciary.

Without limiting the right of the respondent to hereafter assign other and additional reasons, it is our contention that said sections are unconstitutional in that they violate Article 3 of the Constitution of the United States and the Fourth and Fifth amendments thereto. (Tr. 6)

2. Even though the Grain Futures Act and such sections thereof as are relied upon by the Government to give validity and effect to this proceeding, should by a court of competent jurisdiction be found to be constitutional, which to date has not been done, we urge and contend that the Act is not applicable to this complaint or to a proceeding of this character and that the complaint herein initiated thereunder is not in compliance with said Act. It is obvious from a reading of Section 6 of the Grain Futures Act of 1922, that its provisions were intended to be regulatory, remedial and preventive. This proceeding, if we read the averments of the complaint correctly, overlooks and ignores that which we contend is a plain and apparent purpose and intent of the Act, and in so doing, transforms this proceeding into a puni-

tive expedition that was never contemplated by the Congress of 1922. Section 6 of the Grain Futures Act of 1922 reads:

"If the Secretary of Agriculture has reason to believe that any person is violating any of the provision of this Act or is attempting to manipulate the market price of any grain in violation of the provisions of Section 5 hereof, or of any of the rules or regulations made pursuant to its requirements, he may serve upon such person a complaint stating his charge in (Tr. 7) that respect * * * requiring such person to show cause why an order should not be made directing that all contract markets, until further notice of the said Commission, refuse all trading privileges thereon to such person."

The complaint in these proceedings does not charge nor does it contain an allegation that the respondent, Arthur W. Cutten, "is violating" certain provision of the Act, or "is attempting" to manipulate the market price of grain. All allegations of the complaint relate to acts occurring in 1930 and 1931, approximately three years before the filing of this complaint. The intent and clear purpose of the Act was restricted to restraining the continuance of an existing condition. It follows that a condition which does not now exist cannot be brought within the remedial purposes of the Act. The only procedure which the Secretary of Agriculture can follow to enable him to utilize this Act as an instrument of prevention is that of alleging that the respondent, Arthur
56 W. Cutten, is now violating certain of its provisions and is now attempting to manipulate the market price of grain in violation of this provision. We assume that the Honorable Secretary of Agriculture has carefully considered the institution of this complaint and, of course, is cognizant of the fact that there is no present violation exactly (Tr. 8) as the record of this case will establish that there was no past violation. The language of the Act fixes the period of limitation within which proceedings may be brought as the period during which the offense is being committed.

3. Examination of the complaint on which these proceedings are brought, discloses that there is not a single allegation serving to explain the laches attributable to the Grain Futures Administration in this particular. To resurrect charges of this character after the lapse of three (3) years, constitutes, we contend, an unwarranted use of the Act for a purpose for which it was never intended. We urge that the Commission before whom these proceedings are being taken

and are hereafter to be taken and to whom this record should be returned, is without warrant or authority in law.

4. With the high degree of respect and esteem in which we hold the personnel of the Commission, and with due regard for the character and integrity of those gentlemen who constitute the present Commission, we reserve the point that one of the members thereof appears in the dual capacity of complainant and judge. The official signature of the Honorable Secretary of Agriculture under his official seal appears on the complaint and the provisions of the Act provide that he shall be a member of the Commission to which this record is to be returned. (Tr. 9)

5. It seems to have escaped the attention of the complainant, the Honorable Secretary of Agriculture, that the
57 regulations with respect to the filing of reports were suspended in October, 1932, and the respondent notified of this suspension. It logically follows that with the withdrawal of the regulations, there was likewise withdrawn the lawful capacity to institute a complaint of this character, in that all of the allegations of the complaint relate to alleged violations which admittedly, if they occurred at all, occurred during the years 1930 and 1931.

May it be understood, Mr. Tierney, that the statements which we have heretofore made are made without prejudice to the right of the respondent, Mr. Cutten, to assign such other and additional legal grounds as may hereafter occur to us, either before the Commission or before such courts as this matter may be brought, and that our appearance here is to be taken to be without prejudice to the assertion of the points heretofore stated or hereafter made by us and that what we have said shall stand as a motion to quash the complaint, which motion is to be taken with the case and disposed of by the Commission upon argument.

If we can agree on this method of handling our motion to quash the complaint, I am agreeable to refraining from burdening the Referee or placing upon him the responsibility of ruling on this point. (Tr. 10)

Mr. Tierney: Do you want me to agree with this shot-gun method of objection?

Mr. Taylor: No, I want at this point to have you agree that our motion to quash as made shall go with the record before the Commission and shall not be argued—shall not be ruled upon by the Referee at this proceeding, and that it

shall proceed without any prejudice to our rights in our motion to quash.

Mr. Tierney: It is agreed that the motion be submitted with the record.

Mr. Taylor: We are convinced of the merit of our
58 legal position in support of our motion to quash, and we shall argue and advance it with all seriousness before the Commission by which it must be heard. Should it transpire that the Commission in ruling upon our motion to quash, should grant the same, it follows that there need be no consideration or review on the part of the Commission of the evidence that will be here adduced. On the other hand, should the Commission rule against us on the legal position which we are advancing in defense of the respondent, the case will then, in all probability, be taken up by the Commission for consideration on its merits. We might properly request that a ruling of the Commission on our motion to quash be first had before proceeding with the taking of evidence in the case, and this properly could be out attitude were it not for the keen desire on our part and on the part of Mr. Cutten, (Tr. 11) the respondent, to cooperate with the Government in these proceedings which the Honorable Secretary of Agriculture has seen fit to institute and to publicize.

It is Mr. Cutten's desire and our desire to expedite these proceedings and to save the Government wherever possible in matters of time and expense.

With respect to the complaint which has been filed herein by the Honorable Secretary of Agriculture, and without prejudice to our motion to quash, in behalf of the respondent, Mr. Arthur W. Cutten, we deny:

(a) That Mr. Arthur W. Cutten, has, on the dates alleged in the complaint, or at any other time, conspired and colluded with various persons and grain firms of the Board of Trade to conceal his trading and position in the market from the Grain Future Administration.

(b) That the respondent, Arthur W. Cutten, has, on the dates alleged in the complaint or at any other time, ever
59 made any inaccurate, incorrect and false reports of his position in the market to the Grain Futures Administration. If any disparities exist in the reports made on behalf of the respondent, Arthur W. Cutten, and the reports which the Government believes it was entitled to receive, they will be found to be the result of a (Tr. 12) difference of reasonable interpretation of the regulations, or in the nature of

errors which might reasonably follow from a misconception and misconstruction of the law.

(c) That the respondent, Mr. Arthur W. Cutten, on the dates alleged in the complaint or at any other time, has attempted to manipulate the price of grain.

To summarize, the respondent's answer to the complaint filed herein, is a complete denial of all of its allegations, I would like to have the record show that while we believe, in all seriousness, that these proceedings are unlawful, and that those sections of the Grain Futures Act of 1922 under which these proceedings are brought are unconstitutional, neither our client nor ourselves have any desire to stand in defiance of any representative of the United States, and that if such representatives are desirous of lightening their burdens and expediting the preparation of this record, they are assured of our co-operation to the end that their work may not be harassed or embarrassed by objections on the part of the respondent going to the authenticity of such records as may be properly introduced in evidence. In other words, the respondent and ourselves as his counsel, are conscious of the fact that in the discharge of your duty as solicitor for the

(Tr. 13) Honorable Secretary of Agriculture, you are
60 required to compile and present for the record, data, statistical in character, which under the letter of the law might not be admissible except after proof of countless sheets of paper containing book entries and original entries of similar character. Consistent with the proper protection of our client, we propose to refrain from technical objections relating to the introduction of evidence, which we can agree upon as material and relevant and proof of which is obvious, all to the end of simplifying the preparation of this record and the consideration thereof by the Commission and courts of review.

May it therefore be understood, Mr. Tierney, that our participation in these proceedings, which includes our cross-examination of the Government's witnesses, and the possible production of countervailing evidence in Mr. Cutten's behalf, and such admissions concerning the correctness of records and relating to evidence that may be offered by the Government as are made by us in behalf of the respondent during the course of these proceedings, are without prejudice to our motion to quash the complaint.

Mr. Tierney: Yes. Now, at this time the Government of-

fers the complaint, which will be marked as an exhibit—"COMPLAINANT'S EXHIBIT 1."

Referee: It is received. (Tr. 14)

Mr. Tierney: At this time the Government offers the certified copy of the application of the Board of Trade of the City of Chicago for designation as the contract market.

Mr. Taylor: No objection.

Mr. Tierney: And the order of the Secretary making it a contract market.

Referee: And "EXHIBIT NO. 2" may also be received.

61 Mr. Tierney: At this time the Government offers "EXHIBIT NO. 3" and "EXHIBIT NO. 4", being photostat copies of the records of C. D. Robbins & Company, grain firm.

Mr. Taylor: No objection. We assume that that is going to be connected up.

Mr. Tierney: Yes it will.

Referee: No objection to 3 and 4?

Mr. Taylor: No.

Referee: All right, they may be received. (Tr. 15)

MR. GEORGE E. EGAN, called by Complainant, duly sworn, testified as follows:

My name is George E. Egan. I live at 14 N. Mayfield Avenue, Chicago. I am office manager for the Uhlmann Grain Company, with whom I have been connected for 6 years. I have been office manager slightly less than 5 years. I was office manager during the years 1930 and 1931. The books and records of the Uhlmann Grain Company were kept under my general supervision and I am familiar with them. (Tr. 16-17)

I have with me the Street Books of the Uhlmann Grain Company in which are recorded transactions in the 1930 September and December wheat futures; the 1931 May, July, September and December wheat futures; and the 1932 May wheat future. (Tr. 22) The Exhibit marked "Complainant's Exhibit #5 is the Street Book covering the 1930 September wheat future. "Complainant's Exhibit #6 covers the 1930 December wheat future; "#7" covers the 1931 May and July wheat futures; "#8" covers the 1931 December wheat future, and "#9" the 1932 May wheat future.

Mr. Tierney: The Government at this time offers each separately, EXHIBITS 5, 6, 7, 8 and 9.

Mr. Taylor: We have no objection to the introduction
62 of those documents from the standpoint of authenticity.
We assume that Mr. Tierney will connect them up with this case, but until such time as that is done, we reserve an objection to the introduction of those documents on the grounds of relevancy, which we will press later.

Mr. Tierney: There is no objection made as to their identification? (Tr. 23)

Mr. Taylor: No sir, not to their identification.

Referee: As I understand it, they have been offered and do I understand there is an objection at this time, or do you want to reserve your right in the form of a motion to strike in the event that Mr. Tierney does not connect them up?

Mr. Taylor: We reserve a right to a motion if Mr. Tierney fails to connect them up. We have no objection from the standpoint of identification or authenticity.

Referee: GOVERNMENT EXHIBITS 5 to 9 inclusive will be received and respondent's counsel may make a motion to strike if he so desires at a later time in the event that Government counsel does not connect the exhibits up.

The Street books are records showing the dates, prices, the broker with whom the trade is made, and the customer's accounts. The Customer's account appears under the column labeled "Customer". (Tr. 24)

On page 29 of "Exhibit 5", the vertical line down the column is used instead of ditto marks, and the other books are kept in a similar fashion. Each horizontal line of the Street Books represent a round lot of 5,000 bushels. "Exhibit 5" which covers 1930 September wheat, is similar to the others I have identified, and was kept in the same manner.

Referring to "Exhibit 7", I find an entry under date
63 of December 22, 1930, showing the sale of 90,000 bushels
July wheat for account 57 Special. That was Mr. Arthur Cutten's account. (Tr. 25) On January 16, 1931, according to the Street Book, 175,000 bushels July wheat was sold for 57-A Special account, and 525,000 bushels July wheat for 57 Special account. (Tr. 27)

On May 18, 1931, according to the Street Book, there was sold for 57 Special account 95,000 bushels September wheat, and 5,000 bushels September wheat was sold for 57-A Special account. I do not know who gave the order for the sale of 5,000 bushels for 57-A Special. Mr. Richard Uhlmann gen-

erally handled the orders. On June 3, 1931, according to the Street Book, there was sold for 57-A Special account 180,000 bushels September wheat, and 20,000 bushels for 57 Special. (Tr. 28) On June 12, 1931, according to the Street Book, 700,000 bushels September wheat was bought for 57 Special account, and there were no transactions on that date shown by the Street Book in the 57-A Special account. On July 1, 1931, according to the Street Book, 95,000 bushels December wheat was sold for 57 Special account, and 105,000 bushels for 57-A Special account. (Tr. 29) On July 3, 1931, according to the Street Book, 100,000 bushels December wheat was sold for 57 Special account. On July 14, 1931, according to the Street Book, 700,000 bushels December wheat was bought for 57 Special account. (Tr. 30) On November 25, 1931, according to the Street Book, 95,000 bushels December wheat was sold for 57 Special, and 105,000 bushels for 57-A Special. On November 23, 1931, according to the Street Book, 200,000 December wheat was sold for 57 Special. (Tr. 31) On December 10, 1931, according to the Street Book, 100,000 bushels 1932 May wheat was sold for 57 Special account. All of my answers have been based upon the Street Books in
64 evidence here. According to "Exhibit 7", there was a purchase on January 14, 1931, of 305,000 bushels July wheat for 57-A Special account, and 495,000 bushels July wheat for 57 Special account. In making my last answer, I took into consideration the notation appearing on page 82 of "Exhibit 7", —"57 Special" and "57-A Special". I note the "57 Special" is written in ink. I do not know the writing. (Tr. 32) I note also on page 82 of "Exhibit 7", "57-A Special" in blue pencil. I do not know when that entry was put in, but I recognize the writing. It is that of Joe Crilly. On Page 83 of "Exhibit 7", there are two entries that were included in my answer of 800,000 bushels bought on January 14, 1931. These appear on three lines—"57 Special". I do not know the handwriting. It is not Joe Crilly's. (Tr. 33) On page 84 of "Exhibit 7", I notice an entry "57 Special". That is not in Joe Crilly's handwriting. Those items on page 84, "Exhibit 7", were included in my answer of 800,000 bought on January 14, 1931. Items appearing on page 85 of "Exhibit 7", were also included in my answer of 800,000 bought on January 14, 1931. I note between the figure "57" and the word "Special", the letter "A" in blue pencil. The letter "A" in blue pencil is in Crilly's writing. I do not

know who wrote "57 Special" in ink. On page 86 of "Exhibit 7", appears an item "57 Special" in ink, and further down on the page also appears in ink an entry "57 Special". Both of those entries were taken into consideration in my answer that 800,000 bushels were bought on January 14, 1931. (Tr. 34-35) I note also on page 86 of "Exhibit 7", the "A" in blue pencil. The "A" is in Mr. Crilly's handwriting. I do not recognize the other writing. On page 87 of "Exhibit 7", appear entries of some transactions which I also took into consideration in my answer that 800,000 bushels were bought on January 14, 1931.

65 I note at the top of the page "57 Special" again in ink, (page 87 "Exhibit 7") and I see a little "A" put in between the "57" and "Special". The "A" appears in blue pencil, the "57 Special" in ink. (Tr. 35) Below the words and figure "57 Special" 20 round lots are covered, or 100,000 bushels. The "57 Special" in blue pencil is in Mr. Crilly's handwriting. These accounts were entered on the grain ledger.(Tr. 37)

"Exhibit 10", grain ledger, identified. (Tr. 38) According to "Exhibit 10", there appears an entry under date of June 12, 1931, showing a purchase of 495,000 September wheat for 57 Special account, and 205,000 for 57-A Special account. I do not know how that compares with the entries in the Street Book.

"Exhibit 10", our grain ledger. on January 16, 1931, shows the sale of 495,000 July wheat for 57 Special account, and 205,000 for 57-A Special.

Q. How do you account for the fact that the Street Book and your Grain Ledger are not in accord?

A. Clerical error is the only way I can account for that.

Q. How do you account for the fact that 57 Special did not get above 495,000?

A. Because of the instructions.

Q. From whom?

A. That the clerks received.

Q. From whom?

A. From Mr. Richard Uhlmann, evidently. He always gave those instructions.

I have never been instructed to see that none of those accounts ever got above 495,000 (Tr. 39)

Q. On the Street Book it says 525,000 was sold for 57 Special and 175,000 for 57-A Special. On the ledger only

495,000 went to 57 Special and the balance of 205,000
66 went to 57-A Special. Now what is your explanation, Mr. Egan, of that discrepancy?

A. The explanation is that the boys in the settlement room never put the accounts on the Street Book; just clerical errors, all their fault. (Tr. 40) Nothing strange that neither 57-A Special nor 57 Special ever got above 500,000. The daily long and short record shows the position of each customer in each different operation of grain at the close of business every night, and it is changed according to the purchases and sales made for his account on that day. (Tr. 41) That is not a permanent record. It is changed from day to day—a sort of a slate which you can erase.

According to "Exhibit 10", February 10, 1931, 200,000 July wheat was bought for 57 Special, and 85,000 for 57-A Special. (Tr. 42)

Looking at the Street Book on that transaction I find "57 Special" written in ink, and then down ten lines find "57-A Special" written in blue pencil. The handwriting "57-A Special" in blue pencil I recognize as Mr. Crilly's. Below that about 10 more lines I find "57 Special" written in blue pencil. I note the vertical line that serves as a ditto mark extends from the first appearance of 57 Special on that page clear to the bottom of the page. And after the original entry was made, "57-A Special" was written in by Mr. Crilly down a few lines, and then lower on down "57 Special" was written in. I would say those changes were made when they were marked for P & S. (Tr. 43) I do not know of my own knowledge. I did not see who did it. I cannot recall, the entry under 57 Special appears in ink, and this change as to this July wheat bought on February 10, 1931, appears in "Exhibit 7".

Q. At this time the Government offers in evidence "EXHIBIT 10".

Referee: Is there objection?

Mr. Taylor: The same objection as to the former docu-
67 ments. Admitted, that is, no objection to the authenticity or their identification.

Referee: "EXHIBIT 10" will be received.

Looking at "Exhibit 10", I note there appears an entry on May 18, 1931 of 95,000 September wheat sold under 57 Special, and 5,000 in 57-A Special. (Tr. 44)

Looking at the Street Book referring to the same transaction, 95,000 September wheat appears to have been sold on

May 18, 1931, for 57 Special, and 5,000 for 57-A Special. That appears on page 78 of "Exhibit 8". I do not recognize whose handwriting "57-A Special" is in. There are so many clerks making entries in that account I could not recognize them all. (Tr. 45)

After the transaction of May 18, 1931, the 57 Special account with Uhlmann Grain Company was short 495,000 September wheat. If the other 5,000 had been put into "57 Special", it would have had a total net short position of 500,000. But the other 5,000 was put into "57-A Special".

Looking at "Exhibit 10", the grain ledger, under date of June 3, 1931, 200,000 September wheat was sold for 57-A Special account, and none for 57 Special.

Looking at the Street Book on that same date and on that same transaction, in September wheat, I find 180,000 for 57-A Special, and 20,000 in 57 Special. In other words, instead of 20,000 being put into 57 Special, the entire 200,000 was put into 57-A Special. (Tr. 46)

On June 3, 1931, 57 Special was short September wheat 495,000 bushels, and if the 20,000 appearing on the Street Book as sold for that account had been posted to it, it would have been over 500,000 bushels.

68 There is nothing peculiar in the circumstance, that the 20,000 was not posted to that account. Just an error in the entry on the Street Book. Looking at the grain ledger, "Exhibit 10" I note that on June 11, 1931, 310,000 July wheat was bought for 57-A Special. With respect to that transaction the Street Book shows 310,000 bought in 57 Special.

I account for the fact that none of it was entered in 57 Special account—as another error—an error in the entry on this book—the Street Book. Those errors occurred did not necessarily occur when the Cutten account got around 495,000. (Tr. 47) They occurred in other places. The only explanation I have for that is it was simply an error some place. That error, the one I have just referred to where the 310,000 July wheat was bought for 57 Special and none entered to that account, but all went to 57-A Special was that the man who entered the trade did not designate the amount properly in the Street Book. It was carelessness on his part, because these books are correct. The ledger is correct. The Street Book where this 310,000 was entered for 57 Special—was an error.

I have no record here from which I could point out that error. (Tr. 48) It is entered here from the trading card—

entered on the Street Book from the trading card; that is the card made out by the pit broker at the time the transaction is made; and the account is put on by one of the clerks and later entered into the Street Book. Entries appearing in the Street Book are made from the cards of the pit broker showing the transaction as it occurred in the pit. And entries in the grain ledger, which is "Exhibit 10" are made from the order. Wherever there was not a written order they would be made up—a memorandum order. (Tr. 49)

The grain ledger shows that on June 2, 1931, 495,000
69 September wheat was bought for 57 Special, and 205,000 for 57-A Special.

In the Street Book it shows 700,000 for 57 Special. On this page is one of those other corrections I spoke of some time ago when you asked if there were any in any other account.

Q. I'll get to that. I will let you point out a lot of them just as soon as we get to them. Now if you will just answer my question. How do you account for the fact that the 700,000 shown on the Street Book bought for 57 Special was not entered in the ledger in the same fashion?

A. A clerical error.

Q. Another clerical error?

A. Yes, evidently.

Q. You notice that as far as the ledger is concerned (Tr. 50) 495,000 was all that was put into the 57 Special account?

A. That is right.

Q. Anything significant to you in that entry?

A. No.

I never heard of any instructions to any clerk to keep any account under 500,000. As shown by our ledger, I know of no time that either 57 Special or 57-A Special ever went over 500,000 in the years 1930 and 1931. Those two accounts were active accounts, and at no time in that two-year period did they ever get over 500,000 in any one wheat future.

Q. You think that was just a circumstance, do you?

A. I do not know what Mr. Cutten's idea was.

Q. Well, the Uhlmann Grain Company were following Mr. Cutten's directions, were they not?

A. Yes. (Tr. 51)

I had not heard that Mr. Cutten had directed the Uhl-
70 mann Grain Company to keep these accounts under 500,000. My explanation then is that the 700,000 September wheat bought June 12, 1931, for 57 Special, was in fact

bought 495,000 for 57 Special and 205,000 for 57-A Special. (Tr. 52)

For the years 1930 and 1931, accounts 57 Special and 57-A Special had purchases of 6,085,000 and sales of 6,785,000. And in that period of time, 1930 and 1931, with purchases and sales of that volume, neither 57 Special nor 57-A Special at any one time ever exceeded 500,000 in any one future. I never noticed that the 57-A Special account is not used until the 57 Special account has approximately 495,000. I could not say that was not a fact without checking up.

Looking at "Exhibit 10", the Grain Ledger, it appears 95,000 December wheat was sold for 57 Special account, and 105,000 for 57-A Special account. (Tr. 53) The 95,000 gave 57 Special 495,000.

Looking at the Street Book on that day and comparing the entry in the ledger with that of the Street Book, it shows 15,000 for 57-A Special and 95,000 for 57 Special. (Tr. 54) The 95,000 that was put into 57 Special account gave it 495,000.

Looking at "Exhibit 10", the Grain Ledger, it shows 100,000 December wheat sold on July 3, 1931 for 57-A Special account. The Street Book shows 100,000 December wheat sold on July 3, 1931 for 57 Special account. None of the 100,000 was put into the 57 Special, and if the 100,000 that was sold for 57 Special had been put into 57 Special, it would have had 595,000. There doesn't appear to be any correction on the Street Book in this connection. (Tr. 55-56)

It appears in "Exhibit 10", the Grain Ledger, that on July 14, 1931, 495,000 was bought for 57 Special, and 205,000
71 for 57-A Special. There are no corrections appearing on the Street Book with respect to that transaction.

Q. How do you account that 495,000 of it only went to 57 Special?

A. An error in the entry on the Street Book.

Q. There is nothing on the Street Book which appears to be corrected?

A. On the Street Book there is no correction there, no.

I know that these are correct in so far as they agree with the confirmation sent to the customer and the orders and cards. The trade in here is entered from the order. I haven't seen the orders since, possibly never saw them personally. The routine we have shows these entries here are correct. (Tr. 57-58)

Based upon the system of bookkeeping which we have it

would follow that these are correct in the customers' books. I haven't the documents here to point out where the error occurred.

The Grain Ledger as of November 25, 1931, May wheat sold, it shows 95,000 to 57 Special account, and 105,000 in 57-A Special. The 95,000 gave 57 Special 495,000.

I have the financial ledger here (Tr. 58) Complainant's Exhibit 11, consisting of 5 sheets is the 57 Special account appearing on the financial ledger of the Uhlmann Grain Company. And Complainant's Exhibit 12 is the financial ledger account of 57-A Special with the Uhlmann Grain Company. Exhibits 11 and 12 are both financial ledgers and both are part of the records of the Uhlmann Grain Company kept under my supervision.

Mr. Taylor: Do you want to offer those in evidence, Mr. Tierney?

Mr. Tierney: Yes, we will offer them in evidence at this time?

Referee: Any objection?

Mr. Taylor: Let the same objection stand as to the 72 others. We will admit the authenticity. (Tr. 59)

Referee: COMPLAINANT'S EXHIBITS 11 and 12 may be received.

Under date of July 15, 1931, on sheet No. 1 of "Exhibit 11", I note the following: "Transfer No. 57-A Special balance", and under "Credit" column, $32,152.31." That indicates that the credit balance of 57-A Special account was transferred to 57 Special.

On "Exhibit 12", 57-A Special account, I note an entry under date of July 15, 1931, "Transfer balance to 57 Special account" under debit $32,152.31, which indicates the same thing.

There is another transfer appearing in "Exhibit 11", under date of December 8, 1933. That was a debit balance in 57-A Special which was transferred to 57 Special account; (Tr. 60) an indebtedness in account 57-A Special to the Uhlmann Grain Company, $1,723.35, was transferred to the 57 Special account. In other words, the 57 Special account took the indebtedness of the 57-A Special account.

The effect of the transfer on July 15, 1931 involving $32,000.00 was a transfer of money owing to 57-A Special account to the 57 Special account, or in other words, the profits of the 57-A Special account were transferred to the 57 Special account in the sum of $32,152.31. (Tr. 61)

The profits accumulated in the 57-A Special account which were transferred to the 57 Special account under date of July 15, 1931, were profits from January 14, 1930 to July 14, 1931.

The errors which appeared in these various accounts occurred during 1930 and 1931. (Tr. 62)

The profits that were made from 57 Special and 57-A Special all eventually reposed in 57 Special ledger account.

73 The 57 Special account was Mr. Cutten's. Mr. Cutten got the profits, as far as our records show, from both accounts.

Based upon the records I have produced here, those of the Uhlmann Grain Company, Mr. Cutten got the profits from 57-A Special during the years 1930 and 1931 as shown by this entry of July 15, 1931. (Tr. 63)

I have the cancelled check here showing that. That check represents what we paid him on that day, which balanced the account. The check includes the item of $32,152.31 appearing under date of July 15, 1931. (Tr. 64)

This "Exhibit 13" is the check concerning which I have testified, and this is the check that included the profit that was transferred from 57-A Special account to 57 Special account on July 15, 1931. This check is a part of the permanent records of the Uhlmann Grain Company and produced by me in response to a subpoena.

Mr. Tierney: The government offers at this time COMPLAINANT'S "EXHIBIT 13" identified by the witness as follows:

"Uhlmann Grain Company, 1480 Board of Trade Building, Chicago, Ill., July 15, 1931. Check No. 28229. Pay to the order of Arthur Cutten $124,642.41. Drawn on the Continental-Illinois Bank & Trust Co., Chicago, Ill. Signed: Uhlmann Grain Company, by Richard F. Uhlmann. Endorsed by Arthur W. Cutten." (Tr. 65)

Mr. Tierney: The check has been paid.

Mr. Taylor: The signature of Cutten is stamped thereon, is it not?

Mr. Tierney: It is stamped, yes. The check was paid July 15, 1931 and bears also the endorsement of the Continental-Illinois Bank & Trust Company, by stamp, under date of July 16, 1931.

Referee: As the Referee understands it, "Exhibit 13"

74 has been read into the record rather than going in separately as a physical exhibit, in order that the witness may have his check back. Is that correct?

Mr. Tierney: That is right.

I was served with a subpoena to produce some other documents in addition to these: "All records, powers of attorney, guarantees and correspondence in possession of the Uhlmann Grain Company, containing any instructions or directions with respect to opening and carrying wheat futures accounts upon its books under symbol 57 Special and 57-A Special."

To my knowledge the Uhlmann Grain Company has no written instructions or powers of attorney in their possession with respect to these accounts. (Tr. 66) If they existed Mr. Uhlmann would be the one who might likely have them. The document marked "Exhibit 14", letter dated February 23, 1934, addressed "Grain Futures Administration, Chicago, Illinois" was signed by me.

Cross-Examination.

If there were any powers of attorney running from customers to our firm I would know of them. (Tr. 67) And I would know of any guarantees and letters from customers of our firm to the firm. We keep a special file for them. And the same would apply to any clarifying correspondence or orders in writing relating to the carrying on of all accounts.

I understand that 57 Special account was Mr. Cutten's. He is a member of the Chicago Board of Trade. A member of the Board of Trade handling a grain transaction through our firm or any other firm on the Board of Trade pays a different commission than an ordinary buyer or seller of grain. The member's rate is one-half of the non-member's rate. (Tr. 68) Account 57 Special was a member's rate of commis-
75 sion, one-eighth cent a bushel. I know what commission, if any was paid by Mr. Cutten on 57-A Special—one-quarter cent a bushel.

Q. Did the fact that one-quarter cent a bushel commission was paid by the owner of 57-A Special, and one-eighth cent a bushel paid by the owner of 57 Special indicates anything to you as to the ownership of those accounts?

Mr. Tierney: Objected to as calling for his incompetent conclusion—not based upon the evidence. The books themselves are the best evidence as to what the transaction was.

Referee: I think the question asked the witness is whether or not that would indicate anything to him. As I understand, he has been qualified as an expert and therefore must answer the question.

Objection overruled. Complainant excepts. (Tr. 69)

Mr. Taylor: What is to the procedure here, Mr. Referee, in ruling on questions. Are the witnesses to proceed with their answers, and then the exceptions, or objections and exceptions taken?

Referee: Well, the Referee would suggest that counsel right now agree that whenever an objection is overruled, an exception automatically follows. That is customary. If counsel will agree to that—otherwise, if they wish, they may note an exception.

Mr. Tierney: I will agree that exceptions be taken.

Mr. Taylor: That is quite agreeable. The witness will answer then?

Referee: Oh, yes; the witness will answer the question.

Witness: It indicated that transactions in 57 Special and 57-A Special were for different people and not for the same person.

The Street Books are records by date and price of
76 transactions made with various brokers for different accounts. (Tr. 70) The Street Book is a record of transactions with original brokers, and then at the close of the day you have the final accounting with the clearing house on all Board of Trade transactions.

Customers' transactions are in separate books. Customers' final profit or loss on a transaction comes from the P & S taken from the customers' books. It would be possible for one of our operatives—operators in the pit—to buy or sell a given amount of grain, enter that in an account, which account might be broken down into several sub-division, like Special 1, 2, or 3, and that allocation of the total order—a total buy or sell, of say a million bushels of wheat, would not be known until at the conclusion of the day the manner in which that order was to be allocated to the various accounts was found out from the customer. (Tr. 71)

The mechanics of a transaction of that character would be in an instance where the order was given to a broker direct on the floor, I presume by somebody in the pit, or over the telephone, or otherwise, and he would send the card up with the transaction on there, with no account on it, or he might say for a certain account; and later on the accounts would come through telephoning or otherwise. And in a situation of that sort if we find orders with a buy or sell for a customer—he having several accounts—it would be customary and usual to take up with that customer the manner in which those ac-

counts of purchases or sale were to be allocated to his various accounts.

I never talked to Mr. Cutten about his account. I never talked to him in my life and know nothing about his books. (Tr. 72) I know nothing whatsoever about his reporting his transactions to the government. Mr. Cutten has never given me any orders or instructions with reference to the con-
77 duct or control or supervision of his accounts. I never 'phoned him in regard to them. It is a frequent occurrence and not at all an unusual practice for customers to use symbols and letters and numerals designating their accounts. They don't want everybody to know what they are doing—the clerks.

It is not unusual, but quite common, for a customer to have several accounts indicated by different symbols and by different numerals.

Our Street Book is compiled from data in the nature of trading cards that come up from our representatives in the pit either buying or selling such commodity as might be the subject of the transaction. (Tr. 73)

The customers' ledger, in connection with transactions for customers, is made up from the order and is the final and correct record of the transaction in question. The customers' books take priority in regard to the customer's account. (Tr. 74)

After an order is filled it is shortly thereafter entered on the blotter. Later on the cards come up from the floor and are entered in the Street Book. This is all done within a period of a few hours and there are a numerous number of transactions coming or being recorded in our blotter and our Street Book, depending on the amount or the volume of business being done. The amount of transactions that must be recorded in the Street Books and the blotter are such as to cause frequent or infrequent errors because of the amount of speed required in completing transactions. (Tr. 75) Errors are not uncommon. Those errors should be corrected when the P & S mark off the accounts on the Street Book. They are generally then corrected. Errors in the Street Book should be corrected in your P & S and Grain Ledger. In this instance they have not been corrected in the Street Book. Some of them have and some have not. (Tr. 76) When correc-
78 tions are made in the grain ledger of errors appearing in the Street Book, that does not in any way affect the accuracy of the accounting as between us and our customer.

The corrections on the grain ledger are the final record of accounts, and the correct record of accounts between our firm and our customer.

In transacting for a customer we refer to the customer's account. The Street Book is the record of all transactions made with various brokers. Eventually there is an order number put opposite every transaction. (Tr. 79) When the first original entry is made there is no account put in. They are put in later when the cards are checked. They come back to the department then for the entry of accounts, and the purpose of our P & S and our grain ledger accounts is to establish the record of the transaction as between ourself and our customer.

The Street Book is made up at various times during the same day. The Grain Ledger and Street Book are made up the same day. (Tr. 80)

Redirect Examination.

The pit transaction may be entered first in the Street Book and sometimes may be entered first in the ledger. It is possible that it would be entered in the Grain Ledger first. In these transactions I cannot say whether they were entered in the customer's account first or afterwards. (Tr. 81)

I don't know who put up the margin for 57-A account. The only record I have is what appears in these accounts and I would not know who put them up. We have the regular customer's account. I couldn't say if there is any record of the Uhlmann Grain Company that would indicate who put up the margin for the 57-A account. (Tr. 82) We certainly keep a record of margins but where they come from I could not say.

79 Q. Where is the margin on Street Book for 57-A? Where is one that shows the deposit?

A. 57 Special account, a deposit of $20,000.00.

Q. Show me one in the 57-A account.

A. There are none.

Q. None in the 57-A account?

A. No.

Q. The account was not margined then?

A. No, it was not.

Q. Is that the usual practice with the Uhlmann Grain Company to trade for people without margins? (Tr. 83)

A. It has been done at that time, to trade for people of financial standing.

Q. If Arthur W. Cutten told the Uhlmann Grain Company to buy or sell 100,000 they wouldn't worry about the margin about that?

A. They would now because there is a restriction of the Code.

Q. In 1930 and 1931?

A. I don't suppose so. (Tr. 84)

MR. RICHARD F. UHLMANN, called by Complainant, duly sworn, testified as follows:

Direct Examination.

I am Secretary of the Uhlmann Grain Company, a corporation. (Tr. 84) I am acquainted with Arthur W. Cutten. I was one of the men of our firm with whom Mr. Cutten dealt in his transactions. There were several others. We were a corporation. There is my father, the senior partner, a brother-in-law, and we have solicitors and brokers. The arrangements for trading through our firm during the period of 1930
80 and 1931 were not made with me. We have no powers of attorney or written documents directing the Uhlmann Grain Company in the manner in which to handle the accounts 57 Special and 57-A Special. We have never had anything in writing.

Mr. Cutten was known to my father for 46 years. His word was as good as gold and whatever arrangements were made were verbal. (Tr. 85)

Cross-Examination.

There is also a company known as Uhlmann & Benjamin. That is a partnership. I am a partner of that firm, and 100 per cent of the partners own 97 per cent of the stock of the Uhlmann Grain Company. Uhlmann & Benjamin are engaged in general brokerage business and do everything a broker does under that title.

I have known Mr. Cutten for 15 years. I have had business transactions with Mr. Cutten. (Tr. 86)

Q. And your business association with Mr. Cutten has re-

sulted in your holding what kind of an opinion of Mr. Cutten as to his integrity and character?

Mr. Tierney: Just a minute. We object to that. In the first place it is certainly not cross-examination, and if this sort of testimony is competent at any time I presume the counsel will have to call this witness, but certainly we didn't go into Mr. Cutten's reputation for truth and veracity and integrity, and it is certainly improper at this time. I insist upon this objection.

Mr. Taylor: What is the ruling, Mr. Referee?

Referee: Well, ordinarily we are not very strict about confining cross-examination to what is brought forth on direct in these hearings. I think perhaps it might be advisable though for counsel on either side when they have a witness to conduct the cross-examination on what pertains to be direct, to make their cross-examination pertain to what was brought out on direct, and afterwards make the witness their
81 own witness, but I feel in view of the fact that no jury is involved and the Secretary is going over this and it rests with the Commission, that it is not a very serious matter, and I will not attempt at all times to segregate what is strictly proper on cross and what may be considered really direct (Tr. 87) examination on the part of counsel as to the questions.

Referee: You may answer that, and I think it will be regarded as of direct testimony, in view of the fact that—

Mr. Tierney: Mr. Referee, please; counsel knows that it is improper at any time to go into a subject that hasn't been gone into on direct examination.

Mr. Taylor: I know nothing of the sort. The witness was interrogated as to what he knew of Mr. Cutten.

Mr. Tierney: He wasn't asked as to whether he thought well or bad either. But the counsel knows that it is not proper, and so does the Referee.

Referee: Objection overruled.

Complainant excepts.

Witness: From my knowledge of Mr. Cutten he enjoyed the highest integrity, paid his obligations; he enjoyed a parental legacy of decency, uprightness, everything that a citizen could do, and he obeyed the laws of the land.

The partnership of Uhlmann & Benjamin carry individual accounts similar to the accounts such as have been described by the testimony of Mr. Egan and defined as 57 Special and 57-A Special. (Tr. 88)

Q. There would be no reason why Uhlmann & Benjamin could not handled one or the other of these accounts, giving consideration to the type of business?

Mr. Tierney: Objected to as wholly irrelevant, immaterial, and not cross-examination.

82 Referee: Objection overruled.

Complainant excepts.

Witness: It could have done it just as easily. We never solicited the account.

(Hearing adjourned at 4:25 p. m., May 14, 1934, to 10:00 a. m., May 15, 1934.)

(Tr. 89)

Tuesday, May 15, 1934—10:00 A. M.

Referee: All right, gentlemen.

Mr. Taylor: Mr. Uhlmann, will you resume the stand, please.

Mr. Tierney: Mr. Taylor, as I understand the record now, you are taking this witness out of order and making him your witness.

Mr. Taylor: Well, I am agreeable to that. I had not thought that that was necessary. I think you have opened it up sufficiently but—

Mr. Tierney: It makes a little better record. I do not object to it, if you want to take him out of order.

Mr. Taylor: Yes.

Mr. Tierney: Make him your witness.

RICHARD F. UHLMANN, having been heretofore sworn, resumed the stand and testified for respondent as follows:

(Tr. 90)

Originally in 1925, Mr. Cutten had traded with us, and that account was closed some time later—about 1926. Then there was a lapse of about four years during which Mr. Cutten had never traded with us, and my father, who had been very close to him always, said that he would try to telephone to him, to see if he could not get the account reopened. I sat right next to my father. He said he would like very much to have him trade again, and to that extent he made the first arrangements.

Apparently, from the conversation that ensued, Mr.

83 Cutten wanted a "number" account rather than a personal account, so that everything in our office would not become a matter of public property. And my father turned

to me and said "Mr. Cutten would like the number 57. Can we get it?" So I went out to our card index system and found out there was a 57 account under the name of Harry Wolf, and I came back and (Tr. 91) said that we cannot give him that account, but if he is insistent on getting that number for some particular reason, we can make it 57 Special. And then I heard my father say, "All right, we will give you 57 Special as your number and it will be known only to my son and to me. I am over sixty years of age. I travel a great deal. I am sometimes away from business for six months. Perhaps it would be better for all the papers and everything, the conversations to be with my son," which was in that case myself.

After that all the confirmations went to 57 Special, care of Richard F. Uhlmann, and in due course of time when the trades were confirmed that day, I sent those papers over, trying to keep the identity of the account concealed in the office. From that point I had most to do with this account 57 Special in our organization. It was known in our organization as my account, and the majority of interviews and conferences that were had between our firm and Mr. Cutten were had by me. (Tr. 92)

The 57-A Special Account was opened in the same year—6 months later. Mr. Cutten 'phoned to me and told me, as I knew, that he frequently traded for others, asked me if we could handle such an account. I told him of course we could. It was arranged that he was to be responsible to us for margins. We would look to him for protection and for the sake of convenience I would give that account a different number—I would call it 57 Special A. That was done on the spur of the moment, no special thought, no particular thought.

But I reminded him that he would have to pay an addi-
84 tional commission. He said that was all right, he had done that before, (Tr. 93) he was trading for others, and he would pay the regular non-member's rate as he was accustomed to doing when he traded for others. The volume was not so much discussed as the manner in which trades were to be given. It was understood that he would give orders for both of those accounts. I understood that he was willing to risk his individual risk; every man has his limit, and I knew from my previous experience that he had traded for others, and I simply thought that as long as he wanted to make those trades for other accounts and they were properly margined, there was no reason why we could not accept them. He vol-

unteered the information that he would be responsible. (Tr. 94)

57 Special was opened in June, 1930, and 57-A Special was opened in December, 1930. Mr. Cutten had had business relations with our firm for 3 or 4 years prior to 1926. (Tr. 95) At that time he had just the one account. He carried accounts with other firms. In 1921 I worked for Jackson Brothers and I had access to the books. I knew that Mr. Cutten was trading heavily because Mr. Cutten made his office with that firm. In 1921 he frequently traded over 500,000 bushels. He frequently traded for others and I knew of certain accounts for whom he traded, although they were numbered accounts. (Tr. 96)

In 1921 there was no Grain Futures Administration, and his method of trading was very similar to the method of trading later with us. By that I mean he traded in his own account and probably had a dozen accounts for others. These accounts were carried under symbols and numerals as in this situation. My impression is, and I cannot prove that, although it was confirmed possibly later, that he was trading for the Junior partners of that firm and he was trading under numbered accounts. We have a great many ac-
85 counts under number and symbol. We do a business from coast to coast. We have one large account that is known by the letters of the three children, and it is known only as that. I think it is called the "M.E.F." account. (Tr. 97)

The normal procedure in handling these Cutten accounts 57 Special and 57-A Special, was the orders came to us by belephone but that was not the only way. Mr. Cutten would frequently call me from the trading floor. He would instruct me to buy or sell a certain quantity. I rushed back to the pit. The important thing in any execution is to get a quick fill. I didn't stop to ask for which account it was executed, I simply went in.

If I was not available, they often called my office. They may have spoken with a girl on the 'phone or with some other party and they would say, "tell Dick to sell or buy 200 wheat", as the case may be, or it might have been 500. And that information was given to me over our private telephone to the trading floor, or else it was directed by one of the partners of the concern who often received these orders.

Now, in no case did we ever have a written order from Mr. Cutten. After these trades were made, some (Tr. 98) times I was not so busy and I would go to the telephone and I would

report these trades immediately. I filled some of the orders myself on a card such as this. This is an ordinary trading card. One side is the purchase, the other side is the sale. And I would say, "Mr. Cutten, we executed that order. Is there any special account for this? Is this your regular account?" And he would designate the account for whom this was to be handled.

Now this is the one method in which an order was given. Probably just as often we had no prior knowledge of an order being filled in the pit. Mr. Cutten would call up one of a
86 number of brokers. He may have called a broker acting for another. And he would say, "Sell a million bushels and I will split that up with my five different brokers." It is not necessary to tell them about it until after the close of the market, because he didn't want it generally known that he was trading in the market to any extent. The result of this latter transaction was that very often we did not get our trading cards until after the close of the market. The broker would sent up one, two, or five cards, and we would put them in an envelope and he would mark them either "C.R.U.", which is my initial, or my initials. (Tr. 99) He would mark on it "57", without denoting whether it was 57 Special or 57 Special A. And this envelope or these cards were either dropped on my desk, after the close of the market, or they went straight to our settling room.

Now, I make this point because I think it is important. In order to facilitate our Street records, and that is the important thing—there is a fine if the Street Book is not made up in time. We have to make the clearing sheet. If I happen to stay out rather late for lunch, these cards were taken in and they may have had the marking "57", in to our settling clerk. I came back from lunch and they would say, "here, we had cards today from 57 for the sale or purchase of so much wheat". And then I called up Mr. Cutten and I would speak to him if he were available, or speak to his Secretary, and reported the trade; thanked him for the business and asked if it was to be carried in his account or for the account of others, and very often I couldn't get Mr. Cutten. Mr. Cutten ate lunch too. He sometimes stayed out until three or four o'clock. And when that happened, these cards were in the settling room for two or three hours before they got to the customer's desk. (Tr. 100) When I found out from Mr. Cutten how the trades were to be handled, my next procedure was to go to the customer's department and tell them,

87 "Now, you are going to get cards for the purchase or sale of a certain quantity of wheat. And when these cards come to you, a certain amount has been designated by Mr. Cutten for 57 Special and a certain amount to be carried for 57 Special A." And of course I understood that they would cooperate with the street Department and check up any discrepancies there may have been, because sometimes the original card might have been marked "57", or might not have been marked at all. But for the sake of accuracy, I will say now that I paid very little attention to that, to see that the Street Book was properly marked.

The reason I say that, is, the Street Book is exactly what the name implies. The Street Book is a book that shows the transaction with the Street. The fact that we had a customer is incidental. I might have sold a million bushels for myself, which I didn't happen to, and that account might have been put in later. But the Street Book is to get the information of the quantity of wheat bought or sold, the broker with whom the trade was made, and the price. Now, those were the important things that had to be shown on our Street Book and that went in first. The account came in later, or may have (Tr. 101) come in later.

The designation of the account 57 might appear on the card, the trading card that the pit broker carries on which he places the purchases and sales of a commodity as he makes it. The numeral "57" on the card is generally—in fact I think practically always, put on by the man who keeps our blotter. That is after the card is sent from the pit to the bookkeeping department. The pit broker has nothing to do except to see that his trades check with the other houses and with the order. We give our pit broker an order to buy or sell, let us say 100,000 bushels of wheat, and then that order, when executed by the pit broker, is sent up there and under orders from (Tr. 102) our customer's department, that
88 order for 100,000 bushels might be broken down into 20 different customers of 5,000 bushels a piece. That is where half of our trouble lies because the quantities on the card will not correspond to the quantities on the order. For instance, a broker gets two orders at the same time, for the sale of 50,000 bushels each; a total of 100,000 bushels. He might sell on his card in lots of 5,000—20 transactions. But those 20 items must correspond to the two items on the order. Now the broker, on the order, will not endorse each lot separately. If he has the individual trades for say 10 lots on

one order for 5,000 bushels each, he simply summarizes that and writes on the order—"50,000 bushels". (Tr. 103)

I would call up Mr. Cutten and tell him what trades had been put down to his account and I gave him the executions. There were various prices and I called them off and he designated to which account they were to be placed, and I took the instructions back to my clerk in the customer's department and told him accordingly. And if the cards had not been designated otherwise, there was to be that split up according to the instructions received by me from my client.

Mr. Taylor: Q. And whatever changes in accounts made in your customer's ledger were all made pursuant to instructions from Mr. Cutten?

A. Yes sir.

Q. You at no time had any instructions, general or blanket instructions as to the allocation of transactions, or the volume of a given transaction to his various accounts? (Tr. 105)

A. We had not discretion.

Q. And you could not make such an allocation until you could contact with Mr. Cutten, is that correct?

A. That is correct.

89 Q. And each day as the transaction was executed on the floor of the Exchange, later, that required that you would communicate with Mr. Cutten to ascertain the manner in which he wanted the entire transaction, as executed, allocated to his various accounts, is that correct?

A. In essence that is correct. The actual procedure was that I would sometimes speak with the Secretary and report the transactions and leave word that when he came in he should 'phone me and give me instructions if there were to be any, for the handling of the account. That was particularly true where we had no record except a bunch of cards. (Tr. 106)

I had a number of accounts. Those papers came to me before they went to Mr. Cutten because I generally designated Mr. Egan or some clerk to take those to Mr. Cutten's office in order to keep the identity. I knew practically everything that went on in Mr. Cutten's account. But as I say, 1930 is four years ago and I am probably not as clear on it today as I was then. But I would say, without being boastful, I think I am competent.

The explanation I made with respect to the transaction of June 12, 1931 about which Mr. Egan testified, applies to other

transactions about which Mr. Egan testified. The only possible difference may have been that Mr. Cutten was an extremely busy man; that he left some of the details to his secretary, and consequently we were sometimes in the habit of receiving instructions from her instead of directly from him. (Tr. 107-108)

I would prefer to refer to the difference between the entries in the Street Book and the Grain Ledger, which Mr. Egan referred to as errors, as neglect. By that I mean it may have been a technical error, if my knowledge of Webster is correct. I made the proper allocation to the Cus-
90 tomer's Department within five minutes after the time that I spoke with Mr. Cutten or Mr. Cutten's Secretary.

As soon as I gave that information, I naturally assumed that that would be re-layed to our settling department, and that if a prior entry had been made as to account number, that it would be changed.

Now, for the information of those not as familiar with the Grain Trade Market as I think I am, I will say this: Here is a typical example of an order: This order may be given to a broker, and if this happens to be reported on the telephone, in the routine way, and then over the private wire, this order will reach the upstairs office sometimes two hours before the broker's card. In that case, the order goes on the blotter before the order is entered in the settling room. On the other hand, if I am out to lunch or Mr. Cutten is out to lunch and we have no written orders, and I testified that we haven't, we have nothing to go by but the cards, and those cards may have been in the possession of the settling clerk two or three hours prior to the time of the order. And that is the reason that in the afternoon checking there should be some compromise, some difference adjusted, (Tr. 109) if there are any differences, between the card marking and the settling book. The neglect on our part to correct or have our accountants correct the Street Books, in no way interfered or affected the true purposes of those Street Books. The Street Book, to me, while a book of original entry, is a useless book to the extent that the day after the entry is made, for most practical purposes, it could be torn up. (Tr. 110)

We keep a Street Book because the Grain Futures Administration requires that we do so. I devised our system of bookkeeping and I got one of these Street Books originally without our name on it. We simply used the common sheet;

it is the ordinary routine type, and the Street Book was
91 used more in the old days before we had the Clearing House.

Now, at the end of each day, if I have made a trade with Jackson Brothers or some other house, Bartlett-Frazier, after the settlement is accepted by the Clearing House, I have nothing more to do with the individual broker. The Clearing House accepts the obligation with me and I accept their obligation, so that I have a contract with the Clearing House, not with the individual broker; and finishing up, in the street we do use it, for the account number. That is required by law.

When the P & S, which is the make up, purchase against sale, after that goes through the customers' department, and the customers' department is the only real record that we have with our trade, that P & S is marked off against the Street Book, just with a line. But other than that, if our bushels at the end of the day check, if we have bought and sold as many bushels as we (Tr. 111) have customers for those accounts, we are finished.

After I would talk with Mr. Cutten and he would tell me where he wanted this trade of his placed—that is, how much to each account, each transaction was confirmed to Mr. Cutten that day in writing. The original confirmation was sent to Mr. Cutten either under the designated number "57 Special" or "57 Special A". We sent that information to him on the same night that the trade was made with us. There were never any changes made in these confirmations. The confirmations checked with our customers' ledger. If he kept books his records would have been from the written confirmations which we sent him. (Tr. 112)

The P & S's are made from the customers' ledger. The confirmations were sent from the customers' ledger. There have been no changes made on the customers' ledger with reference to the allocation of a transaction for the various
Cutten accounts, after we had instructions from Mr. Cut-
92 ten that they had been set up. (Tr. 113)

Assume that a man buys 100 shares of Steel at 40, and sells it out at 42. The P & S will show a net profit, $200.00, less commission and interest. Now in the same way the P & S, without other instructions from our customers, is always made up against the oldest trade standing on our books. In other words, if a man is short 300 wheat as of three different dates, and he purchases that wheat all at one time, or 200 say in one day, we make up a P & S on 200,000 bushels of wheat

against the oldest sale. The third lot of 100,000 bushels remains open, unless the customer designates otherwise. That is common commission house practice.

We do not show the commission on the P & S Statement. The commission and tax are shown as a separate item (Tr. 114) on the bottom of the P & S. The P & S, like the confirmation, is sent to the customer. (Tr. 115) It is sent the day the trade is closed, in the same envelope.

Mr. Cutten told me the 57 Special A account was not his. In December, 1930, when the account was opened he told me he was trading for others, or he would trade if we accepted that type of account. I told him we would. We knew his integrity and that he was responsible. We looked for protection to him, but we told him that as long as the account was for others, we would charge the full commission, and he said that was all right. We did not ask him for whom he was trading nor whose account it was, and he did not volunteer to tell us. (Tr. 116)

This method of handling accounts is quite general. I know a great many that trade for their wives, but outside of that I would say that it is more general. I do it every day of my life. To amplify that a little, I am a member of the New York Cotton Exchange individually. I have never made a trade in a bale of cotton in New York in all my life, but I have
93 twelve numbered accounts in New York with various brokers. I give those orders. I tell them to buy or to sell. They report those transactions to me and of course I in turn report them to my client. Now, there is money exchanged occasionally. They do not know my customer. They look to me for that. I put up and take down. That all goes for my account. They know only Richard F. Uhlmann, and they are satisfied. I am acting as an agent, and in money I am the intermediary. I put up a lot of money, but I see to it that I get it back. (Tr. 117)

The Uhlmann & Benjamin firm is engaged in very much the same type of business and operations as the Uhlmann Grain Company. That firm handles grain transactions.

Q. The 57 Special A could very well have been placed with Uhlmann & Benjamin, could it not, had there been any desire to have accounts or to regulate accounts to the end of keeping both under a 500,000 bushel limitation?

Mr. Tierney: That is objected to as calling for his incompetent opinion and argumentative and wholly immaterial.

Referee: Objection overruled.

Complainant excepts.

Witness: I lost the trend of that question.
Referee: Read the question.
(Question read as above recorded.)
Witness: A. It could have been done very easily.
Mr. Taylor: Q. And naturally would have been done?
Mr. Tierney: The same objection.
Mr. Taylor: A. If there had been any arrangement as between yourself and Mr. Cutten to keep these accounts under a 500,000 bushel limitation? (Tr. 118)
Mr. Tierney: The same objection.
Referee: Objection overruled.
Complainant excepts.
94 Witness: A. There would have been. We did not see the necessity of it then, and under the same circumstances I would not do it a bit differently today. I would handle it the same under the Uhlmann Grain Company.
Mr. Taylor: Q. The carrying of these accounts under the designation of 57 Special and 57 Special A was suggested by Mr. Cutten, was it not?
A. You mean those numbers?
Q. Yes.
A. Yes, sir.
Q. I mean no one in your organization, no partner or member of your organization had anything to do with taking the accounts, say from the name Arthur W. Cutten and placing them under numerals, as they were carried?
A. No, he had requested them. (Tr. 119)
Every account on our books has some designated number. In most cases there is a very good reason for that. We have a large wire business. We have had as many as five wires between Chicago and Kansas City, and at times four wires to New York, and very obviously when an order comes in it could not be marked "Arthur W. Cutten" or "James C. Jones". It was understood that they would have a symbol, and to that end each office kept track of its own numbers. We designated in Chicago possibly between one and a hundred, and one and two hundred, for the Chicago account, and so on, and Mr. Cutten simply asked that his name be not attached to the account, which was quite natural. Many big accounts do that. There is no pleasure in having the clerical force know what they are doing all the time. Clerks go to lunch about the same time, 11:30, and they discuss it. A clerk
95 of one house will say—"Well, we just got a big order from So-and-so", and the other fellow says, "Yes, we got the

same", and the first thing you know, you don't have to snoop around any records, you know who the buyer and seller was that day. It all comes out. There are no secrets in the business. (Tr. 120) This is not done to fool anyone. Simply to keep our business to ourselves. Enough stuff gets out so that these precautions are sometimes necessary.

To my knowledge we have never been without representatives of the Grain Futures Administration calling to examine our books. If they were not in on the average of once a month I was generally surprised. (Tr. 121) They took complete charge of the books. If we wanted to call margins while they were there they had the first say as to whether they wanted the books. We turned everything over to them. They were our friends, and my instructions were to show them the works. I am fairly positive these Cutten accounts 57 Special, and 57 Special A were examined by the representatives of the Grain Futures Administration, and checked over by them. They did not come to me outright and say—"Now we are looking for this", but from the type of information they were seeking in connection with privileges and who did this and who did that, and looking over the accounts—my conversations were very little with these men but occasionally one of the clerks would say that they are investigating such and such. I am a pretty good guesser. I could tell what they might have been seeking and I think I could have told them much more quickly than they could have gotten it from the books. They asked who 57 Special was. I told them it was Arthur W. Cutten. (Tr. 122) I was in the office and they came in to me and said that the government men were out there, that they would like to know about this 57 Special Account, and I said "There is no secret; it is Mr. Cutten's account. Tell them." And they apparently went back. They wanted to know who the 57 Special A account was and I
96 said I did not know. I did not know then and I do not know now. They said they would like—something to this effect; I am speaking from indirect testimony—Mr. Egan said they would like very much to find that out. I concealed nothing. I said—"You can tell them that Mr. Cutten gives these orders. I know it is not his account. We have always charged the full commission, but I am not in knowledge of those facts and they will have to find that out from Mr. Cutten."

I feel that we overstepped the line every time in cooperating with the government agents in giving all the information they wanted with reference to these accounts and all other ac-

counts in our office. We are not one of the houses that tried to make it hard for them. We knew they could finally get the information and we were cheerful givers.

Q. From your knowledge of the number of times that the representatives of the Grain Futures Administration were in (Tr. 123) your office, the questions they asked and the things they did, do you feel that the government in 1930 and 1931, during the time that these transactions were being carried on under these two accounts that have been the subject of the testimony here, that the Grain Futures representatives had as much information then or had full information then on these accounts?

Mr. Tierney: That is objected to as calling for his incompetent opinion and conclusion and irrelevant and speculative, wholly immaterial as to what he may have assumed.

Mr. Taylor: I asked him if he knew.

Referee: Read the question.

(Question read as above recorded.)

Referee: Objection overruled.

Complainant excepts.

Witness: A. I figured they knew everything.

Mr. Taylor: Q. At that time?

97 A. At that time. They were in so often and they had so many men and they were so thorough.

Q. When you say they knew everything, they knew everything about these two accounts, 57 Special and 57 Special A?

A. I meant that particularly.

Q. Now from the standpoint of the business interest of your firm, it did not make any difference, did it, whether the Cutten business came to you under 57 or 57 Special A?

A. From what point of view? (Tr. 124)

Q. From the standpoint of the business advantage of your firm.

A. If a man is petty, I presume, wants to bleed his customer a little extra, I might take the point of view now that if I had gotten him to trade only in the Special A account, which was for others, I would have had double the commission, but the figures show it was never that way; very few trades for that account, and, generally speaking, it was not our policy. We figured that the customer lived longer if he did not put too much in the "kitty".

I never gave instructions to anyone in our organization that neither of these accounts were to be permitted to exceed 500,000 bushels in volume. I never had any agreement with Mr.

Cutten with reference to the maintaining of these two accounts under a figure of 500,000 bushels each.

Q. I am going to ask you specifically, Mr. Uhlmann, did you ever conspire with Mr. Cutten to so maintain these accounts? (Tr. 125)

Mr. Tierney: That is objected to as calling for his legal conclusion,

Mr. Taylor: I have got a right to it. That is what we are charged with.

Referee: Objection overruled.

Complainant excepts.

98 Witness: A. No, I am no conspirator.

I did not know how Mr. Cutten was reporting his trades to the Grain Futures Administration, and he never discussed that with me nor I with him. (Tr. 126)

Cross-Examination.

The first transaction in the 57 A account with which I am familiar was the sale of 10,000 bushels in June, 1930. Mr. Cutten was not entitled to a member's rate of commission on the 57 A Special account. He was a member of the Board of Trade.

Q. He was your customer, wasn't he?

A. No, he was not. He told us the 57 Special A was for others. He was not our customer.

Q. Whom did you look to to take care of the losses, if any, and take care of that account, other than Arthur W. Cutten?

A. None other.

Q. Then you would say he was not your customer?

A. I would not.

Q. Then he was your customer on the 57 A, wasn't he? (Tr. 128)

A. He was not.

Q. Who was?

A. I told you on the stand here that I did not know, and I do not know.

Q. Then you were doing business with an unknown customer from whom you required no margin, is that the fact?

A. He was unknown to me. He was not unknown to Mr. Cutten.

Q. To whom did you look to make good that account?

A. Mr. Cutten.

Q. And he was a member of the Board of Trade?
99 A. Yes sir.
Q. And Cutten was entitled to trade through you on a member's rate of commission, wasn't he?
A. Only for his own account.
Q. He only had one account in that firm, didn't he, and that was 57 A?
A. You are confusing your letters. He had 57 Special and 57 Special A.
Q. And Mr. Cutten was the only man that gave any orders for trading in 57 A Special, wasn't he?
A. Yes sir.
Q. And he was entitled on every order that he put in that was executed by you to a member's rate of commission, wasn't he?
A. We did not think so. (Tr. 129)
Q. The rules of the Board of Trade permit that, don't they? Are you familiar with them?
A. I was on the Rules Committee for three years as a director.
Q. Do the rules of the Board of Trade permit a member to trade at member's rate of commission? Yes or no.
A. Repeat that, please.
(Question read as above recorded.)
A. I cannot answer that yes or no, but I can amplify it very easily.
Q. Well, let's have your amplification now with reference to the rules.
A. Yes. I will give you that rule as I know it. I settled that very often for others. On an account that Mr. Cutten had brought to us as an outsider, the Board of Trade is
100 compelled to charge that outside account one-fourth cent commission. We in turn have the right to rebate to Mr. Cutten one-eighth cent commission for bringing us that account; and that is the only way that we can handle it.
Q. So the result is the same; he pays one-eighth, which is the member's rate of commission?
A. The result is not the same. We charge that other account a quarter and he never got a rebate of one-eighth.
Q. Oh, I am not talking about what he got. Cutten as (Tr. 130) a member of the Board of Trade under the rules was entitled to trade on that account and pay, as you say, in the first instance, one-quarter of a cent and was entitled to a rebate of one-eighth, that is a fact, is it not?

A. He could have been.

Q. I say, he was entitled to that, wasn't he?

A. Only under one consideration, that he had gone to the secretary of the Board of Trade and registered at the time of this transaction, both with the knowledge of the broker and myself, both signing that they were entering into that agreement; and only that way.

Q. So it is true, is it not, that Mr. Cutten could have traded through the Uhlmann Grain Company for the 57 A account and have paid in the first instance one-quarter of a cent, and had a rebate of one-eighth; that could have been done?

A. That could have been arranged.

Mr. Taylor: What was your answer?

Witness: It could have been arranged.

Mr. Tierney: Q. Now in 1930 and 1931, neither the 57 Special account, nor the 57-A Special account, exceeded 495,000 bushels. How do you account for that?

A. Well, how would I account for the fact that my ac-
101 count never exceeded that?

Q. Will you answer my question, Mr. Uhlmann? (Tr. 131)

A. I will try to.

Q. Can you account for it, or can you not, or is it just a coincidence?

A. I am no mind reader. I took orders. I did not ask him, I did not urge him to over-trade.

Q. That is your full explanation of that?

A. It is not full. I might enlarge on it.

Q. Well, amplify it as far as you can.

A. It is a guess. I am saying I have to assume that you think I know what is in the other man's mind. I do not. If you want me to guess, I can guess six reasons why, yes.

Q. Let us have the six or seven or whatever it is.

A. Make it four.

Q. Whatever you have.

A. First of all, he probably wanted to limit his risk. You know, every man's blood pressure rises at a certain point.

Q. You were interested in his blood pressure, too?

A. How?

Q. You were interested, I take it, in his blood pressure?

A. No, but he was interested in his own. I have my limitation. I might trade in 10,000 bushels and that might seem like a lot to me. If I am a trader—I might give this as a hypothetical thought—he may not get the same thrill until he traded in 400,000. I don't know. (Tr. 132)

When Mr. Cutten traded in either 57 Special or 57-A Special he gave no written order. We always communicated with him during the day, however. If I had given the order,
102 for instance, to a broker like Mr. Huh, who fills orders, and told him to sell 400 wheat, I very often ran to the telephone or went up to our office and 'phoned, and these cards would come through, a batch like this, and we would pick them out. I have a trading card here. Each broker or firm has his name at the head of it. (Tr. 133) "Exhibit 15" is a trading card. The broker has a group of these cards when he gots to the pit. He carries a pocket full of them.

Mr. Cutten's instructions came to a broker or they came to me or to one of my partners, and I generally told the broker or I executed the order myself. He would tell me, for instance, "Use your own discretion. Sell 200 wheat and take your time about it." And I would handle it. (Tr. 134) I would write the quantity on the card. For instance, I had an order for 100,000. I would write 20 July wheat. I would write the broker. I would write, for instance, "J. E. B.", and the price. If I sell 20, I still have 80 more to sell. I am a broker. I am filling this order. The next time I cannot get anybody to take 20, but I can sell 15, and I turn around and I sell that to Kidston. He won't pay me quite as much. He cannot buy at three-quarters. He is filled up; he will give me 99⅞. All right. It is a pretty good sale still. I keep on until my order is taken care of. Then I sell 65 to Jackson (Tr. 135). The symbol for that is J-a-x-o-n. I will then 'phone over my private wire to somebody upstairs and I will say—"Better tell our friend"—I don't mention the name—"better call him up." I am speaking to someone who is an executive. "Better call him up and tell him we sold 20 wheat at ¾ and 80 at ⅞." That is the important thing to him. He wants to know the price. I will take this card and put it in my pocket. Then the card either goes separately or when I get to the office I take it to our settling department. (Tr. 136)

103 This transaction of 700,000 September wheat sold on June 14, 1931, was handled similar to this. And that card eventually got back to the office, and on that particular day, if I had been busy—which was just as likely—that was a big day—these cards went up with a group of other cards. I gave them to our 'phone man. We wait until we get this many. They are collected every half hour, and those cards are taken up and given to the settling clerk.

Q. Now what does the settling clerk do with them then?

A. He enters them in the Street Book.
Q. He enters them in the Street Book.
A. Yes, that is right.

* * * * * *

Q. When, in this particular instance, at what time during that day was it determined what rate of commission was to be charged on that 700? (Tr. 137)
A. As soon as I could communicate with Mr. Cutten and find out whether this was his own account or the account of another.
Q. So when you consulted your customer on that day he told you to put part of it in 57-A and part of it in 57 Special?
A. This is right.
Q. Did he ask you at that time how much he had in 57?
A. No, he had a very good system. He knew that.
Q. He kept a system?
A. He kept books.
Q. You have seen his system, have you?
A. I have been in his office and I knew when his secretary called up that they had the identical information that we had.
Q. In other words, he had in his office all the time def-
104 inite information as to just how much he was short?
A. That is correct.
Q. Or long?
A. That is right.
Q. So following that, after you called him up, and said "We have sold 700 for you today, what will we do with it?" he instructed you to put so much in 57 Special, is that correct?
A. My impression is that 700 was not sold in a bulk lot. (Tr. 138)
Q. It was sold in one day, was it not?
A. It was sold in one day but I spoke to him several times. (Tr. 139)
Mr. Tierney: Did you report the 57-A account at any time to the Grain Futures Administration?
A. When we were asked for it.
Q. You never reported it any other time?
A. No.
Q. You never included the 57-A account in the 57 account and reported them as one account to the Grain Futures Administration?
A. No sir.
Q. And these were two accounts—your customer, Cutten,

arbitrarily had you divide his account on that book into two sections, did he not?

A. No sir.

Q. All right. Did you pay anybody else any profits out of 57-A, other than Cutten?

A. No sir.

Q. But you paid Cutten profits out of 57A account, didn't you? (Tr. 141)

105 A. We paid him as intermediary, yes sir.

Q. You have your check for $132,000.00 to Cutten, which included profits out of 57 A account, didn't you?

A. $124,000.00.

Q. $124,000.00?

A. Yes.

Then in all instances, as to the account to which these sales of purchases were to go, either 57 Special or 57-A Special, Mr. Cutten gave you specific directions what to do?

A. Yes sir.

Q. You were present in the courtroom during all of Mr. Egan's testimony yesterday, weren't you?

A. Yes sir.

Q. Did you hear Mr. Egan testify to interrogatories, as follows:

"Q. How do you account for the fact that 57 Special did not get over 495?

A. Because of the instructions.

Q. From whom?

A. That the clerks received.

Q. From whom?

A. From Mr. Richard Uhlmann evidently, he always gave those instructions."

Did you hear those answers? (Tr. 142)

A. Yes.

Q. Was Egan in error?

A. No, I wouldn't say so.

MR. L. E. RIGG, called by Complainant, duly sworn, testified as follows:

My name is L. E. Rigg. I live at 2155 McDonald
106 Avenue, Evanston, Illinois. I am Office Manager for Clark, Childs & Keech, Brokers. I was at one time connected with F. B. Keech & Company. That partnership is out

of existence at the present time. The Keech of Clark, Childs & Keech is the same Keech that was with F. B. Keech. I was with F. B. Keech & Company during the years 1930 and 1931. I was cashier. (Tr. 144) I was familiar, in a general way, with the books and records of F. B. Keech & Company. At the present time I am Office Manager of the new firm. (Tr. 145)

"Exhibit 16" consisting of 34 pages is a record of the F. B. Keech Company. That is a record similar to the Street Book. (Tr. 146) It shows a record of the transactions with the daily grain trade in 1930 May wheat futures, with all customers.

"EXHIBIT 16" offered and received in evidence. (Tr. 147)

"EXHIBIT 17" is a record of F. B. Keech & Company showing daily transactions with customers in the 1930 July wheat future. Offered and received in evidence.

"EXHIBIT 18" is a record of F. B. Keech & Company showing daily transactions with all customers in the 1930 September wheat future. Offered and received in evidence.

"EXHIBIT 19" is a permanent record of F. B. Keech & Company showing daily transactions with customers in the 1930 September and December wheat futures, 1930 December corn, 1931 May wheat, 1931 May corn, 1931 July wheat, 1931 July corn, 1931 September wheat, and 1931 September corn. Offered and received in evidence. (Tr. 148)

"EXHIBIT 20" is a permanent record of F. B. Keech & Company showing daily transactions with customers, purchases only, for 1931 December wheat, 1932 May wheat, 1932 July wheat futures. Offered and received in evidence. (Tr. 149)

107 "EXHIBIT 21" is a permanent record of F. B. Keech & Company showing daily transactions with customers, purchases only, of 1932 May corn. Offered and received in evidence. (Tr. 150)

"EXHIBIT 22" is a permanent record of F. B. Keech & Company, showing daily transactions with customers, sales only of 1932 May corn. Offered and received in evidence.

"EXHIBIT 23" consisting of 4 sheets, being the financial ledger sheets of A. W. Cutten, part of the permanent record of F. B. Keech & Co., was offered and received in evidence.

"EXHIBIT 24" consisting of 5 sheets of the financial ledger of F. B. Keech & Company, showing the "L" account, was offered and received in evidence.

"EXHIBIT 25" consisting of 2 sheets, being part of the financial ledger of F. B. Keech & Company, showing the account of E. M. L. Cutten, was offered and received in evidence.

"EXHIBIT 26", financial ledger of F. B. Keech & Company with account No. 97, was offered and received in evidence. (Tr. 151)

"EXHIBIT 27", part of the financial ledger of F. B. Keech & Company with the account of R. J. Cutten, was offered and received in evidence.

"EXHIBIT 28", financial ledger sheet of F. B. Keech & Company, being the account of Maude Cutten, was offered and received in evidence.

"EXHIBIT 29", grain ledger sheet of F. B. Keech & Company with account No. 97, was offered and received in evidence.

"EXHIBIT 30", grain ledger sheet of F. B. Keech & Company with the "L" account, consisting of 4 pages, was offered and received in evidence.

"EXHIBIT 31" grain ledger sheet of F. B. Keech &
108 Company with R. J. Cutten account, was offered and received in evidence.

"EXHIBIT 32", grain ledger sheet of F. B. Keech & Company with Maude Cutten, was offered and received in evidence.

"EXHIBIT 33", grain ledger sheet of F. B. Keech & Company with E. M. L. Cutten account, consisting of two sheets, was offered and received in evidence.

"EXHIBIT 34", grain ledger sheet of F. B. Keech & Company with A. W. Cutten, consisting of five separate sheets, was offered and received in evidence.

The A W C account carried with F. B. Keech & Company was that of Arthur W. Cutten (Tr. 152) and the "L" account was Arthur W. Cutten's. All told, during the years 1930 and 1931, F. B. Keech & Company carried the A. W. Cutten account, the "L" account, Maude Cutten account, E. M. L. Cutten account, R. J. Cutten account, and number 97 account.

Referring to "Exhibit 19" and the pages which the Reporter has marked 19-B, 19-C, 19-D and 19-E, the Street Book shows 700,000 bushels September wheat was bought for Cutten on July 2, 1930. (Tr. 153)

Turning now to the Grain Ledger, 210,000 went to the A. W. Cutten account (Tr. 154) and 490 went to the Maude Cutten account.

On June 22, 1930, the Maude Cutten account was short 500,000 September wheat. (Tr. 155) According to the record, on June 23, 1930 there was 10,000 September wheat taken from the Maude Cutten account and placed into the No. 97 account, or the Arthur W. Cutten account, and reduced the Maude Cutten account from half a million to 490,000.

Q. How do you account for that or do you know anything about that, Mr. Rigg? (Tr. 156)

A. I know nothing about it.

Referring to the Street Book, "Exhibit 19", particularly pages 19-F and G, that shows a purchase of 400,000 December wheat for the A W C account, (Tr. 157) while on the Grain Ledger only 200,000 of that was placed in the A W C account, and the other 200,000 was placed in the Maude Cutten account.

Q. Do you know how that happened?

A. No, I don't.

Turning now to the December wheat futures, I find a sale on July 28, 1930, of 600,000 December wheat, 435,000 for A W C, and 165,000 for the R J C account. On the Grain Ledger, 200,000 went to the A W Cutten account, and 400,000 went to the R J Cutten account. The discrepancy between the Street Book and the Ledger is that instead of 435,000 going to the A W C account, 200 went there, and instead of 165,000 going to the R J Cutten account, 400,000 was placed there. (Tr. 158-159)

The ledger shows 200,000 to the A W Cutten account. (Tr. 161)

200,000 December wheat was sold for A W C account on October 29, 1930. The Grain ledger does not show any part of that was entered to the A W C account. As a matter of fact it was all entered in "L" account. (Tr. 162)

Q. Do you know why it was sold for the A W C account and put in the L account?

A. No. (Tr. 163)

On November 13, 1930, 995,000 December wheat was purchased. Those entries appear on pages 19-H to M, both inclusive, in "Exhibit 19". The Street Book shows purchases of 505,000 for the "L" account, 285,000 for the R J C account, and 200,000 for the A W C account.

On a page in "Exhibit 19" which the reporter has marked 19-J, about under the column marked "customer", I note the letter "L" in ink. (Tr. 165) I note a vertical line extend-

ing the full length of the page under that "L", in pen. I
110 also note "R J C" written in in red pencil, "L" account
in red pencil, and "A W C" in red pencil. That pencilling was done, apparently, after the vertical line had been drawn. One is in handwriting and the other is in lettering—one is printing and the other is longhand or script. I think you will find it is two different people. I think that is one person's writing. This is R J C., the way this fellow wrote that. (Tr. 166) In other words, what appears in pen and ink is the writing of one individual and that that appears in red is that of someone else.

Q. Have you any idea of any explanation for that?

A. No sir, no, I don't know anything about it.

Q. You don't know anything about it?

A. No.

On page number 19-L, I find "L" written at the top of the page under the column "customer" with a vertical line the full length of the page, in ink. And that vertical line indicates ditto marks. It is an easier way of making ditto marks. Considering that letter "L" and the vertical line in ink that would indicate that all that was purchased on that sheet was for account number L or letter L at the time it was made. I find also on this page "R J C" in red pencil, "L Account" in red (Tr. 167) pencil, "R J C" again in red pencil, and the letters "A W C" and "L" and "R J C" in red pencil. I cannot tell the purpose of that. Well, in effect, it amounts to this: That what was originally entered on the Street Book for "L," was allocated to various accounts; part of it to R J C, part of it to the "L" account and another part to R J C. That is the way it appears to me. Those purchases that I have described were entered on the grain ledger. On November 13,
December wheat futures, 200,000 to the A. W. Cutten
111 account, 495,000 to the "L" account, and 300,000 to the
R. J. Cutten account.

Q. How do you account for the changes in the discrepancy between the Street Book and the—

A. I have no way of accounting for it at all. (Tr. 168.)

On October 1, 1930, 400,000 bushels May wheat was purchased for A W C account. It all went into the A. W. Cutten account on the ledger. There was 200,000 of this May wheat transferred from the A W C to the 97 account as shown by the records.

Q. Now, how do you account for that, or do you know?

A. I don't know. (Tr. 170)

The May corn futures record for February 9, 1931 shows 300,000 were bought for the A W C account. Looking at the ledger it shows that 200,000 went to the A. W. Cutten account, and 100,000 to the L account. I don't know what the position of the A. W. Cutten account or the L account was at that time. (Tr. 171)

Q. Then you have no explanation of the discrepancy between the Street Book and the Ledger?

A. No I do not.

The Street Book shows a sale of 200,000 December corn for the L account on October 29, 1930. That was posted in the grain ledger to the L account. I note on the Street Book where A W C has been erased and L written over it. (Tr. 172) The page I have reference to is the one that has been marked by the reporter as 19-N. I notice on both pages which the reporter has marked 19-N that there have been some erasures. The name of the account has been changed. It has been changed from A W C to L. It looks like there have been other changes in red pencil that have been erased. It might have been R J, it looks like R J. I would not say positively.

112 Q. Do you know when those erasures were made?

A. No, I do not.

Q. Do you know why they were made?

A. No, I do not. (Tr. 173)

Turning to our Corn ledger, December 18, 1930, I see a transfer from "L" account to the A W C account, of 85,000 May corn. There was 85,000 transferred from the "L" account to the A W C account (Tr. 175)

Q. Was Mr. Miller the man, do you know, that had up with Mr. Cutten the proposition of dividing these trades into various accounts?

A. I don't know anything about that.

The entry "transferred to A. W. C. account, instructions Mr. Miller" indicates that apparently this clerk here had instructions from Mr. Miller to put this in the A. W. Cutten account. It indicates these three items were transferred, 300 December wheat.

On December 14, 1931, according to the Street Book, 200,000 May corn was sold for Mr. Cutten. (Tr. 176) On Exhibit 22-A, a page of "Exhibit 22", appears the transaction that I have just testified about. That transaction was apparently entered in ink in the name of A. W. Cutten. That appears both on the front and the back of "Exhibit 22-A". I also note "L" account written over, apparently, over "A. W. Cutten".

I couldn't say when it was done. I do not know why it was done unless it belonged to the "L" account, or unless A. W. Cutten account had 495,000 bushels in it.

Looking at the ledger I note there has been a transfer of 200,000 July corn on February 11, 1931, from the "L" account to the A. W. Cutten account. (Tr. 178)

Q. Do you know why that transfer was made?

A. No, I do not.

I note that on the grain ledger there was a transfer of
113 200,000 September corn sold on April 24, 1931, from the "L" account to the A W C account.

Q. Do you know why that transfer was made?

A. No.

"Exhibit 35" is a part of the records of F. B. Keech & Company.

"Exhibit 36 to 41" are part of the records of F. B. Keech & Company.

"Exhibits 35 to 41" were produced by me in response to the subpoena.

Mr. Tierney: At this time the Government offers in evidence as "EXHIBIT 35", a letter to F. B. Keech & Company, Chicago; dated September 15, 1930, the same being a guarantee by Arthur W. Cutten, of the "L" account.

Mr. Magner: Can we have it described a little bit by signature, so we won't get it all mixed up? It apparently bears the signature of A. W. Cutten, is that it?

Mr. Tierney: Arthur W. Cutten, Yes.

Mr. Tierney: The Government offers "EXHIBIT 36" a letter of date September 20, 1929, signed A. W. Cutten for R. J. Cutten. The Government offers "EXHIBIT 37", a letter to F. B. Keech & Company, signed Arthur W. Cutten, (Tr. 181) guaranteeing the R. J. Cutten account.

The Government offers "EXHIBIT No. 38", a document purporting to be power of attorney of date December 16, 1931, signed apparently Maude Cutten, Arthur W. Cutten.

The Government offers "EXHIBIT 39", a letter to F. B. Keech & Company, of date March 22, 1930, signed Arthur W. Cutten, guaranteeing the Maud B. Cutten account.

The Government offers "EXHIBIT 40", letter of date
114 December 10, 1929, signed A. W. Cutten, and addressed to F. B. Keech & Company, guaranteeing the E. M. L. Cutten account.

The Government offers "EXHIBIT 41", a letter of date October 7, 1931, addressed to F. B. Keech & Company, signed

Maud Cutten, directing F. B. Keech & Company to transfer all profits, credit balance, to Arthur W. Cutten, and signed Maud Cutten.

Referee: Complainant's "EXHIBITS 35 to 41" will be received. Also there have been offered in evidence Complainant's "Exhibits 17 to 34" inclusive. Is there any objection?

Mr. Taylor: There is no objection as to identification and as to authenticity of the documents. The only objection is that the (Tr. 183) books as a whole have been introduced in evidence, and we object to any part of the books being held in evidence, except such parts as relate to the various accounts that have been under discussion here. We reserve an objection as to relevancy.

Referee: COMPLAINANT'S "EXHIBITS 17 to 34", inclusive, will be received.

I have no records of the Keech Company indicating who gave the orders for these various accounts. (Tr. 183)

Cross-Examination.

In response to the subpoena served on me to produce powers of attorney, guarantees, and so forth, I produce various documents that have been introduced in evidence as Complainant's "Exhibits 35 to 41" inclusive.

"Exhibit A", Power of attorney, Ralph J. Cutten to Arthur W. Cutten, Harris & Keachie, 26 Adelaide Street West, Toronto, Canada", was marked for identification.

The document marked Respondent's Exhibit A first 115 came to my attention two and a half years, or two years ago. I saw it at a time that Keech & Company were actively engaged in business. (Tr. 187)

Mr. Taylor: Are you going to insist that I produce the original?

Mr. Tierney: Yes. Where is Winthrop-Mitchell; here in Chicago?

Mr. Taylor: I can produce the original if you want to put me to the trouble.

Mr. Tierney: I don't want to put you to any trouble, but that certainly is not admissible in evidence in that form.

Mr. Taylor: Well, I offer this in evidence and accompany it with my assurance to produce the original and submit it to counsel for the Government, counsel for the complainant, and satisfy him that this is a true and correct copy of an original which is in Chicago, in the files of (Tr. 188) Win-

throp-Mitchell & Company, and ask that it be marked Respondent's Exhibit A.

Mr. Tierney: In the form that it is now offered, we object to it on the ground that it is not properly identified, and it is not an original. It is supposed to be a copy.

Mr. Taylor: It is a copy.

Mr. Tierney: It is a copy.

Mr. Taylor: That is rigth.

Mr. Tierney: If the original exists, and counsel says it does, I will withdraw the objection.

Mr. Taylor: I will bring it here in the morning.

Referee: Well, I will do this; similar to what I have done before, Mr. Tierney, I will receive it and then I will consider your motion to strike in the event it does not correspond with the original, when received.

Mr. Tierney: All right.

116 (Whereupon RESPONDENT'S EXHIBIT A was received in evidence.)

Early in my testimony I stated that certain of these accounts were Cutten accounts, or were Mr. Cutten's accounts, and in making that statement I think the record will show that I referred to that which is called the "L" account, account Number 97, Maude Cutten account, E. M. L. Cutten account, R. J. Cutten account, and A. W. Cutten account. (Tr. 189) I know nothing more about these accounts than that which appears from the books from which I have been testifying. As a matter of fact, except from the records and from the fact that these accounts are covered by a guarantee—some of them are covered by the guarantee of Mr. Cutten—I don't know what interest, if any, Mr. Cutten has in, let me illustrate, account No. 97, or "L".

One-eighth commission was charged on the A. W. C. account. One-quarter commission was paid on the R. J. Cutten account. (Tr. 190) The fact that a quarter was paid on the R. J. Cutten account and an eighth on the A. W. Cutten account signifies to me that they were two different people and one was a member and one was not a member of the Board of Trade. And the one that was a member was the one that paid one-eighth, and that one in this case was Arthur W. Cutten. And the non-member was R. J. Cutten, being a quarter. I think the commission paid under the "L" account was one-eighth. (Tr. 191) And that would indicate to me that that was an account different from the R. J. Cutten, on which a fourth was paid. The commission paid under

the E. M. L. Cutten account, to my knowledge, was a quarter. And that is true of the Maude Cutten account. (Tr. 193) I have no recollection as to the commission paid under Account No. 97.

I never talked to Mr. Cutten about any of these accounts.

I never received any orders or instructions from Mr.
117 Cutten relating to these accounts. I never talked to R.
J. Cutten or Mrs. Cutten about any of these accounts, and never received any instructions from either of them.

When I was cashier of F. B. Keech & Company, the representatives of the Grain Futures Administration called on F. B. Keech & Company quite frequently to examine our books. And those calls were made occasionally during 1930 and 1931. As Cashier of F. B. Keech & Company I know that F. B. Keech & Company cooperated with the representatives of this administration to accord them full access to the books. And these accounts about which I have been testifying, relating to these various accounts, which for the purpose of the record we will classify as Cutten accounts, were all subject to the inspection and review of the government representatives when they did come to look into our books.

Q. And you think from your recollection of the activities of the representatives of the Grain Futures Administration that they were acquainted with and fully cognizant of the manner in which these accounts were being carried on?

Mr. Tierney: Just a minute. What was that question, Now?

(Whereupon the question was re-read by the reporter.)

Mr. Tierney: That is objected to as calling for his incompetent opinion and conclusion, and not cross examination.

Referee: Objection overruled.

(Complainant excepts.)

Witness: I would say they were. (Tr. 195)

Mr. Tierney: Mr. Referee, at this time counsel has agreed that I may add this to my objection to Respondent's Exhibit A:

In addition to the objection that the document has not been properly identified and appears to be only a typewritten copy,

it also appears that the instrument itself is wholly ir-
118 relevant and immaterial, in that the document does not
purport to authorize Arthur W. Cutten to transact any business on the Chicago Board of Trade or in grain futures. It specifically describes the transactions that may be made

in the name of Ralph J. Cutten, primarily in stocks and bonds and negotiable instruments. (Tr. 196)

Referee: Objection overruled. You may renew your motion to strike later on.

(Complainant excepts)

Turning to the page in the Street Book of F. B. Keech & Company, which has been introduced in evidence as "Complainant's Exhibit 19-N", the letter "L", in the column appearing under the words "The address of contracting customer", and to the change which would seem to have been made thereon by the letter "L" appearing over the word "R. J.", or the word "R. J." in red ink, appearing over the word "L", I don't know as to whether or not the letter "L" was placed on this page prior to the dim letters in red pencil of "R. J." I have no idea when the letters "R. J." were placed there. Referring to the numerals appearing in red pencil marks under the column "account number", I find number (Tr. 197) 2242 at the top of the column. And then bringing that down, under that, I find in red letters the numerals 2260. And under that, in red letters—in red pencil marks—the numerals 1804. And under that the numerals 2065. These red numbers signify the P & S number and they are placed in there and that is what they call marking it off the Street Book. They are placed in there at the time, after the contract is closed. It is the P & S Account of the given customer that is indicated by the specific numerals appearing in the column under the words "account number". That P & S account is sent to the customer (Tr. 198) coupled with or accompanied by a confirmation of each day's transac-
119 tion. These figures which I have testified, indicating P & S. number, are a breakdown of the transactions which appear in the column headed "the address of contracting customer". And that same explanation which I have made, or the testimony which I have given to the P & S numerals appearing on page marked "Exhibit 19-N", would be made by me on all of these pages, on all of these exhibits where I find a similar situation. (Tr. 199) Directing my attention to the entries appearing on the Street Book, under date of July 20, 1930, I said on direct examination that according to the Street Book, they reflect a sale of a total of 600,000 bushels—of all the so-called Cutten accounts. If I were to take the pages upon which the entries which I just calculated and distribute them according to the P & S numbers appearing on the page, it would be distributed according to the P & S number 200

for A. W. Cutten, and 400 for R. J. Cutten. In other words, the Street Book, according to the crayon mark, shows a distribution of this transaction, 200 to A. W. Cutten, and 400 to R. J. Cutten. (Tr. 200)

In "Exhibit 19-A", opposite the initials "A.W.C." are written the figures, in red crayon, "877", the latter being the P & S number. (Tr. 201) On the opposite page, of the same exhibit, to the one I have just indicated, I find the figures "877" opposite the initials "R.J.C." That would indicate that the individual who wrote the figures in red crayon, "877", on the first of the two pages I have mentioned, neglected to write the initials "R.J.C." over the "A.W.C." on the second two pages. If he corrected it there, he should have corrected it here on this page. In other words, the confirmation of P & S, No. 877, ditto marks, indicate that they run all through the bottom of the first of the pages and down almost to the bottom of the second of the pages. But there is a difference between the initials carried on the two pages, the first reading R. J. C., and the (Tr. 202) second reading A.W.
120 C. But the confirmation number on both the pages, or the P & S number, is the same.

That 600,000 was posted or distributed in the grain ledger, 200,000 of December wheat to the A. W. Cutton account, 400,000 was posted to the R. J. Cutten account. In other words, the P & S postings in the grain ledger account, and the P & S postings in the Street Book agree.

During the time I was cashier of F. B. Keech & Company, specifically during the years 1930 and 1931, I had nothing to do with the control of these accounts. (Tr. 203) I made no entries of my own in these books. My only familiarity with the books is just from my general auditing experience and examining these in compliance with the subpoena of the Government to produce them and to testify in regard to them. I have no knowledge of the inception of these given accounts, which for the purpose of the record we will define as Cutten Accounts. I know nothing about when they were closed or what took place under them, except that which appears in these records. I have never received any instructions by any of the persons appearing on the books as owners of these accounts. These red crayon marks which indicate the P & S numerals, run throughout the Street Book of F. B. Keech & Company. They are not limited or restricted just to the pages that have been introduced in evidence. (Tr. 204) And the custom in keeping these books, from my examination of the

same, is that the Street Book would indicate in ink a given account, and then that account would be broken down by the P & S numerals which would be later put on by some clerk in the organization, indicating the P & S numerals.

121 *Redirect Examination.*

I am positive the letters R. J. C. in red ink and other letters, indicating any of the Cutten group, were put in at the time of the P & S. A P & S is a purchase and sale statement, and it is sent out at the time the transaction is closed. It sent out at the time the purchase and sale has been completed. (Tr. 205)

If you sell 100,000 wheat today, and do not have another transaction in your account for five months, we do not send you a P & S statement until you have made the round turn. It is very likely that these numerals indicating the number of the P & S statement were put on there long after the original transaction occurred on one side. One side would be put in quite a while after. In other words, the purchase and sale statement means just exactly what it says. There must be both a purchase and sale before the statement is sent out.

On July 28, 1930, it appears in the Street Book that there was sold for A. W. C. a considerable quantity of December wheat. (Tr. 206) In fact the transaction consumes an entire page. I do not know whether or not on that day A. W. C. account was long or not. If that account was not long on that day, and had no position on that day, the P & S would not have been sent out. 881 P & S was sent out on July 28th. Then he was long on that date, apparently. (Tr. 207) It was P & S'd on July 28th. So when the P & S statement was sent out, after it had been registered in the Street Book, then from the Grain Ledger or the P & S statement, these figures were put in. This was P & S'd on July 28th, the same date that the transaction occurred. It had been first entered in the Street Book all for A. W. C. It was broken down at the time the P & S statement was sent out. (Tr. 208)

122 On July 29, 1930, appears a considerable amount of December wheat sold for A. W. C. I do not know when a P & S was sent out. They did not mark the P & S number on this. It just happened that this one happened to be numbered. I can trace it. This one here seems to be open. This is July 29th. I have no P & S number on this here as an

identification. I happen to have an identification on that other one. I don't know when the P & S was sent out on that one. (Tr. 209) It just happens to be that that P & S number is missing. It also is missing on August 4th, which apparently was the missing item. (Tr. 210) Until the transaction, the round turn is made, the P & S's are not sent out. And the P & S's are made from a record different from the Street Book—from the Grain Ledger. (Tr. 211)

I couldn't tell the position of the A. W. C. account on August 15, or August 5. (Tr. 212) There was a purchase of 800,000, on the 6th of August, for the A. W. C. account. He had a long position on August 6th. He sold wheat on August 9th and on that date we rendered a P & S.

On August 6th he was long December wheat, and on August 9th he sold it. The date of the P & S was August 9th, the date he sold the wheat. (Tr. 213) The P & S was dated August 9th. We make a P & S at the time the complete turn is made. The confirmation is made out daily on all the trades of the day, and a confirmation is sent out when there are no P & S's sent out. But if a P & S is sent out, the confirmation for that day's trade goes with the P & S. A P & S statement is numbered and is sent out when the transaction is complete, when the round turn is made, and there may be considerable time elapse between the two transactions. (Tr. 214)

123 The forms are printed and numbered in advance.

Recross Examination.

The confirmations and the P & S's are made up from the customer's ledger.

The red pencil marks about which we have been talking so much have nothing to do with the confirmation; only the P & S. (Tr. 215)

Redirect Examination.

Each P & S has a number, whether it goes to A. W. C. or R. J. C. There is no connection between the number on the P & S and the number of the account. It is a pure accident that any one account gets a certain number on a P & S. It just happens; it can be any number. They come in a block. We don't assign a certain P & S number to a certain account. He just gets what happens to come off the top of the deck. (Tr. 216)

MR. JAMES F. WADE, called by complainant, duly sworn, testified as follows:

Direct Examination.

My name is J. F. Wade. I live in Chicago. I am connected with the Bartlett-Frazier Company in the capacity of Secretary. (Tr. 219) I am not a director of the company. I am a stockholder. I have been connected with the Bartlett-Frazier Company almost twenty years. I was with the company in 1930 and 1931. At that time I was neither stockholder or Secretary. At that time I was in charge of the future contract department and margins. I am familiar with the books and records of the Bartlett-Frazier Company covering the futures transactions in 1930 and 1931. In 1930 and 1931 Arthur W. Cutten was a customer of the Bartlett-
124 Frazier Company. (Tr. 220-221) He carried two accounts with the Bartlett-Frazier Company designated on our books as Number 7 and Number 20. Complainant's Exhibit 42 bears my signature.

We also had on our books a D. S. account. The address of that account was in care of Arthur W. Cutten and our P & S statements and confirmations were sent in care of Arthur W. Cutten. In other words, the confirmations and P & S's were sent to Arthur W. Cutten for accounts numbers 7, 20, and D. S. (Tr. 221-222) I do not know D. J. Sandie personally. I never saw him, never talked with him and never had any communications from him. I know of no communication in the records of the Bartlett-Frazier Company from D. J. Sandie. I know who guaranteed the D. S. account. It was Arthur W. Cutten. (Tr. 222)

We also had on our books a Mrs. Number 7 account, Mrs. Maude Cutten. The only identification in our records of that account of Mrs. Maude Cutten is simply a guarantee from Arthur W. Cutten. I haven't any guarantee on that account, Mrs. Number 7. (Tr. 223) I have no record guaranteeing that account. There might have been one. I don't know. I couldn't find it in our files. (Tr. 224) The Bartlett-Frazier Company did hot have a written guarantee of Mrs. Number 7 account in 1930. I have not been able to find it in the files. I have brought here, in response to a subpoena, the books and records of the Bartlett-Frazier Company with respect to

futures transactions in wheat futures for the years 1930 and 1931. (Tr. 225)

Exhibit 42, 11 sheets, is the street book for the 1930 May wheat for the Bartlett-Frazier Company. They show daily transactions in the 1930 May wheat futures. They are kept in the regular course of business and record the daily transactions as they occur. (Tr. 226)

Mr. Tierney: Complaint offers EXHIBIT 42 consisting of all sheets.

125 Mr. Magner: Mr. Tierney, I think you marked that last letter 42, and these are also marked 42. Perhaps we should number that letter 42-A to avoid confusion.

Mr. Tierney: Was there a 42 this morning?

Mr. Magner: Yes.

Mr. Tierney: Let the record show that we have marked the letter 42-A.

Mr. Tierney: The government offers at this time COMPLAINANT'S EXHIBIT 43, consisting of forty-eight separate pages, the same being a part of the permanent records of the Bartlett-Frazier Company and covering transactions in July wheat futures for the year 1930.

Mr. Magner: When we get all through, Mr. Tierney, we will make the same general statement.

Referee: Do I understand the objection is similar to that heretofore made, that you reserve your right to make further objection and motion to strike, in the event that Mr. Tierney does not connect up the exhibit with the allegations in the complaint in this case; is that substantially true?

Mr. Magner: That is right.

Mr. Taylor: Not questioning the identification or authenticity, but reserving our right to make a motion to strike and to raise any question of relevancy.

Referee: Complainant's Exhibit 43 will be received.

This group of sheets contained in a paper package, Exhibit 44, are records from the street books of the Bartlett-Frazier Company covering transactions in September, 1930 wheat.

Mr. Tierney: At this time Complainant offers in evidence EXHIBIT 44, being a package containing twenty-one

126 pages of the street book of Bartlett-Frazier Company, covering daily transactions in September wheat futures for the year 1930, relating to accounts of customers of the Bartlett-Frazier Company.

Referee: Is there objection?

Mr. Taylor: The same general objection.

Referee: Complainant's Exhibit 44 will be received. (Tr. 228-229)

Referee: I understand, Mr. Tierney, you offered Complainant's Exhibit 42 and I do not believe I ruled on it. Before we get away from that I will rule on that.

Mr. Meyer: That is 42-A.

Mr. Magner: 42-A was the letter.

Mr. Tierney: 42-A was the letter and 42 was the street book.

Referee: I understand you offered 42 but have not offered 42-A.

Mr. Tierney: Not 42-A; that is correct.

Referee: Is there any objection to 42-A, Complainant's Exhibit?

Mr. Taylor: Same objection.

Referee: Objection overruled. It may be received.

Exhibit 45 contains pages of the street book of the Bartlett-Frazier Company showing daily transactions in December 1930 wheat futures.

Mr. Tierney: The complainant offers the sheets or pages from the street book of Bartlett-Frazier Company, 32 in number, contained in a package marked EXHIBIT 45.

Referee: Is there any objection?

127 Mr. Magner: The same general objection.

Referee: All right. Objection overruled. It may be received.

Exhibit 46 is a package containing sheets of the street book of the Bartlett-Frazier Company for May, 1931 wheat delivery.

Mr. Tierney: The Complainant offers several sheets contained in EXHIBIT 46 from the street book of the Bartlett-Frazier Company, 14 sheets in number.

Referee: Is there any objection?

Mr. Taylor: Same general objection.

Referee: Overruled. It may be received. (Tr. 230-231)

Exhibit 47 contains sheets from the street book of Bartlett-Frazier Company for July 1931 wheat futures.

Mr. Tierney: The complainant offers the sheets from the Street Book of Bartlett-Frazier Company, 17 in number, included in a package marked COMPLAINANT'S EXHIBIT 47.

Referee: Is there any objection?

Mr. Magner: Same objection.

Referee: Objection overruled. It may be received.

Exhibit 48 contains the pages from the street book of Bartlett-Frazier Company covering September 1931 wheat. (Tr. 232)

Mr. Tierney: The Complainant offers the sheets, 19 in number, from the Street Book of Bartlett-Frazier Company, covering 1931 September wheat transactions.

Mr. Taylor: Same objection.

Referee: Objection overruled, it may be received.

Complainant's Exhibit 49 contains records from our
128 street book covering December 1931 wheat futures. There are 23 sheets, in which the daily transactions in wheat futures are entered.

Mr. Tierney: The complainant offers 23 sheets of the Street Book of the Bartlett-Frazier Company, covering December, 1931, wheat, contained in the package marked COMPLAINANT'S EXHIBIT 49.

Mr. Magner: Same objection.

Referee: Objection overruled. It may be received.

The package marked Complainant's Exhibit 50 contains sheets from the street book of Bartlett-Frazier Company covering May 1932 wheat futures. There are 29 pages in the package.

Mr. Tierney: The Complainant offers 29 sheets from the street book of the Bartlett-Frazier Company, identified by the witness and included in the package marked COMPLAINANT'S EXHIBIT 50.

Mr. Magner: Same objection.

Referee: Objection overruled. It may be received. (Tr. 233-234)

I have here the street book recording the transactions on February 4, 1930 in July wheat sold. They are the sheets which I handed you marked Complainant's Exhibit 43. They show a sale of 500,000 July wheat for Account 20 on February 4, 1930. Account 20 was Arthur W. Cutten's. I have the grain ledger showing the posting of those 500,000 bushels that were sold on February 4, 1930. (Tr. 236)

Complainant's Exhibit 51 contains the customer's grain ledger sheets in respect to these particular accounts and all of them in regard to future wheat transactions. In the first column to the left of Exhibit 51 I find numbers that indicate
the date of the transaction. That is the date the transac-
129 tion occurred in the pit. The entry and purchase were made on the same day and in that column was the date of the purchase. In the next column under "quantity", those fig-

ures give what quantity in bushels, and where you see the figure "25" that means 25,000 bushels. The three ciphers are left off of each figure. Tr. 237) The figures in the column under the word "terms", indicate the delivery month for which the contract was made and under the price column is the price at which the transaction was made. Under the column "date sold", is indicated the date the contract of sale was made and under the column "date bought" is indicated the date purchase was made. In our grain ledger we enter the offset opposite the column that is prior in date. We offset the purchases against the sales for the convenience of this record. (Tr. 238)

In the street book there appears an entry on February 4, 1930, of 500,000 July wheat sold for Arthur W. Cutten. 495,000 of that which was sold on that date for Mr. Cutten by the Bartlett-Frazier Company was entered in his Account number 20. That was 5,000 less than the 500,000. The other 5,000 of the 500,000 that appears on the street book was placed in the account of Mrs. No. 7. Mrs. No. 7 had been a customer of Bartlett-Frazier Company prior to this date. (Tr. 238-239) This record does not show when the first transaction was recorded in Mrs. No. 7. It was previous to 1929. In 1930 there was only one transaction for Mrs. No. 7, this sale of 5,000 referred to and the offsetting purchase. The only transaction that appears in the Mrs. No. 7 account in our books during the years 1930 and 1931 was this one 5,000 that was put into that account out of the 500,000 that was sold as shown by our street book on that date. The purchase to offset that sale was made on February 26, 1930. Mrs. No. 7 carried this 130 5,000 for a period of 22 days. I know that the instructions for this purchase of 5,000 came directly from Mr. Cutten. (Tr. 240)

Q. Mr. Cutten directed that 5,000 be put into Mrs. No. 7 account?

A. That is correct.

There was only the one transaction. We probably only had the one instruction.

Q. What was your only instruction with respect to Mrs. No. 7?

A. To place the sale of 5,000 July wheat, made on February 4, at 121¼ into her account.

We got that instruction on the same day that the trade was made. I am absolutely certain it was made on the same day, after it had been entered on the street book. (Tr. 241)

I conclude that Mrs. No. 7 was Mrs. Maude Cutten because at one time in the account we transferred the funds in Mrs. No. 7 account to Mrs. Maude Cutten's account. The profit on the 5,000 was $480.64. There was not a check made out for that profit. There was a transfer of that profit to the account of Mrs. Maude Cutten. (Tr. 242)

On November 12, 1931, in so far as the ledger is concerned, there is nothing to indicate that the $480.64 was given to Mr. Cutten, Mrs. Cutten or anybody. (Tr. 245)

Exhibit 52 is the financial ledger of the Bartlett-Frazier Company. It contains the Bartlett-Frazier Company grain customers' financial records for the letter C and marked series 1 in this particular book.

Exhibit 53 is the Bartlett-Frazier Company financial 131 records covering letters MO to NZ, Series 1.

Exhibit 54 is the Bartlett-Frazier Company grain customers' financial ledger with the letters D to E, inclusive, marked Series 1.

Exhibit 52 to 54 inclusive show the liabilities or the profits and losses that are made by the customers. It also shows their deposits and withdrawals of funds and any funds deposited for marginal purposes would show in that account.

Q. Were there any funds deposited as margins for Mrs. No. 7? (Tr. 246)

A. No sir, there is no margin deposit in that account.

Q. That account was margined, I presume, by Mr. Cutten?

A. It was guaranteed by Mr. Cutten, although I haven't got the record of that guarantee here.

Q. But to your knowledge that is the fact?

A. That is the fact, yes.

Mr. Tierney: Complainant offers at this time EXHIBITS 52, 53 and 54, identified by the witness, being the financial ledger of Bartlett-Frazier Company, covering transactions involved in this hearing.

Mr. Taylor: No objection as to identification or authenticity. We reserve the same objection as to relevancy, in support of my motion to quash or motion to strike.

Referee: Complainant's Exhibits 52, 53 and 54 will be received.

I do not know to my own knowledge who gave the orders for purchases and sales in the Account No. 7, but I do know they came from Mr. Cutten. (Tr. 247)

The financial ledger shows that on June 26, 1930 there was a

transfer from the D. S. account to the Number 7 account.
132 (Tr. 248) One hundred and twenty-five thousand was transferred from the D. S. account to the Number 7 account and one hundred fifty thousand was transferred from the D. S. account to Account No. 20.

As shown by our grain ledger on April 2, 1930, there was bought for the D. S. account 675,000 July wheat, and from that 675,000 July wheat there was transferred to No. 7 account 125,000 and to No. 20 account 150,000. This transfer occurred on June 26, 1930. I do not know why that transfer was made. It was made at Mr. Cutten's direction. He gave all directions with respect to that. (Tr. 249) Mr. Cutten gave directions with respect to accounts No. 7, M. C., Mrs. No. 7, No. 20 and D. S. Mr. Cutten guaranteed accounts No. 7, M. C., Mrs. No. 7, No. 20 and D. S.

Mr. Tierney: Complainant offers at this time EXHIBIT No. 51, which contains fifteen sheets from the grain ledger of Bartlett-Frazier Company and covering Cutten account 0, 7, No. 20, Mrs. No. 7, Maud Cutten and D. S., in all fifteen sheets.

Mr. Magner: The same objection to that.

Referee: It will be received. (Tr. 250)

The street book under date of February 4, 1930 indicates the sale of 500,000 July wheat for Account No. 20. That transaction arose on a contract for offers sold on the previous day. By that I mean on the previous day Account 20, which is Cutten, sold offers that were called on the succeeding morning. The cash for the offers sold went to Account 20 which was Arthur W. Cutten's. (Tr. 252)

Cross-Examination.

According to the records I have the D. S. account was short
400 July wheat from March 6, 1930 until March 10, 1930.
133 (Tr. 253-254) And that position of 400 short continued in the account until April 2, 1930, and the transaction on April 2, 1930 would have left that account in a position requiring reporting. The 5,000 appearing in the account of Mrs. No. 7 under date of February 4, 1930 allocated to that account by Arthur W. Cutten is the only transaction appearing in our books in that account during this period. (Tr. 255) We had one other active account, No. 7 account. The Maude Cutten account was semi-active, comparatively speaking was inactive in comparison with these other accounts. But the

transfer from the D. S. account and the Mrs. No. 7 account are the only two instances that I know of where there were transfers. There was a large number of transactions in Account No. 20, and D. S. during 1930 and 1931 (Tr. 256) Mr. Cutten gave no blanket instructions. Each transaction was covered by the particular instructions given at the time it was made. Mr. Cutten did not, at any time, tell me or any one in our organization that no one of these accounts referred to as Cutten account were not to be permitted to run in excess of 500,000 bushels. On the contrary, at times they did go above 500,000 bushels, and when they did we reported them to the Grain Futures Administration, unless there was one of these errors that they complain about. (Tr. 257)

Representatives of the Grain Futures Administration were very frequently in our office going over our books. They were there in 1930 and 1931. They examined into these various accounts which we are defining here as the Cutten Accounts. I made it my business to find out what they were investigating so that I would be informed. And on one occasion that I recollect, one of the investigators, if I may call him an investigator, came into the office and he had a memorandum of what he wanted to look at; the accounts he wanted to look into.
134 They were small accounts, principally in the northwest, Minneapolis or Duluth, and the memorandum which he had showed 10,000 bushels here and 10,000 bushels there; nothing of any consequence, so far as I could see. When he finished with the investigation, which was everything on the memorandum that he had, he asked to see the Cutten accounts and they were shown to him. No questions were asked relating to the manner in which these accounts were carried to my recollection. No suggestions were made by him as to changes that should be made in the manner in which these accounts were carried by our firm. We were reporting averages of 500,000 bushels at that time. Our clerks were instructed to comply with these requirements at all times. I won't state definitely that they did because they may be negligent at times.

Q. Do you feel that you have been adequately advised by the local office of the Grain Futures Administration as to the requirements or reporting? (Tr. 258)

Mr. Tierney: That is objected to as wholly irrelevant and immaterial and not tending to prove anything in this case.

Referee: Objection overruled.

Complainant excepts.

Witness: No, sir, I do not.
Mr. Taylor: Why?
Mr. Tierney: Same objection to all of this.
Referee: Objection overruled.
Complainant excepts.
Witness: Well, I have made an effort, over a period of two or three years, to inform myself of all the regulations that were in force under this particular law and to do that, the first time that I recollect, probably two years ago, I sent a man to the local office of the Grain Futures Administration, with the request that we be given a copy of all the regulations and all the amendments to the regulations in force under this
135 particular Act. And I did the same thing about December of 1933. And I received a copy, a printed copy, of this miscellaneous circular number 10, of the Grain Futures Administration or the Department of Justice, in answer to that request. Now, that pamphlet, I think, was printed in 1922 or 1923. The amendments were not included, either by insertion or by being printed in the pamphlet, and neither were any of the letters or other communications, copies of the letters or any communications from that office given to us at that time, or at either of those times. So that even now I do not feel that I am fully informed as to these regulations.
Mr. Taylor: You made further efforts, in January, of 1934, for information, did you not?
Mr. Tierney: Same objection.
Witness: Yes, sir.
Mr. Taylor: What was the extent of your actions in that regard?
Mr. Tierney: May I let one objection stand to all of this?
Mr. Taylor: Yes.
Referee: All right, overruled.
Complainant excepts.
Witness: I sent a letter directed to Mr. Fitz—of course, that was after this matter here came up—and requested that we be—the same request that I had previously made, that we be given a copy of the amendments or the regulations and all amendments to them, to the regulations, and that particular copy was more complete than the others I got. But I don't think it included everything that has been issued in respect to these regulations. And then on another occasion I sent to Washington and among other documents that are printed by the Government printing office, I think we had quite an
136 order for them at that time, we included this miscellaneous circular number 10 and that did not include the

amendments that were made to the regulations, either by insertion or by being printed in any manner in the pamphlets.

Mr. Taylor: You followed the regulations, the rules and regulations, issued under the Grain Futures Administration or of the Grain Futures Act in 1922, very closely did you not.

A. I have tried to, yes.

Q. You attempted to be—

A. To be careful.

Q. To keep yourself informed?

A. To keep informed and be careful about them.

Q. That was your duty in the organizations of Bartlett-Frazier Company?

A. Yes, sir.

Q. And in 1930 and 1931, will you state for the record, how you interpreted the rules and regulations of the Grain Futures Administration, relating to the necessity of your reporting on accounts where more than one account appeared in the name of the same person or seemed to be under the control of the same person?

Mr. Tierney: Same objection.

The Referee: Objection overruled.

Complainant excepts.

A. Up to the middle of 1933 it was my understanding and also the understanding of the clerks in the office who make these reports, that we were not required to combine accounts under the control of any one person but that person was obliged to make a report in his individual capacity to the Grain Futures Administration.

Mr. Taylor: So that applying that interpretation to 137 your situation in 1930 and 1931, you reported, in line with your interpretation, only on accounts D. S., account number 20, account number 7, account Mrs. Number 7, when such accounts exceeded individually a volume of 500,000 bushels?

Mr. Tierney: Same objection.

The Witness: That is correct.

The Referee: Objection overruled.

Complainant excepts.

The Witness: Yes.

Mr. Taylor: And is it your understanding that that is the interpretation that was generally accorded these rules and regulations by the Street, if we may refer to all engaged in this grain business?

Mr. Tierney: Same objection.

The Witness: I believe it was. As far as I am informed, that was the interpretation. (Tr. 260-261-262-263-264)

The D. S. account was charged the non-member rate of commission. The No. 7 and No. 20 accounts were charged the member rate of commission. The Mrs. No. 7 and Mrs. Maud Cutten accounts were charged the non-member rate of commission.

At the present time, the street books have no utility from an auditing and accounting standpoint, in our accounting system since we have the clearing house system. The record is merely used to make up the clearing house report, the sheet, clearing house sheet, as it is commonly referred to, and of course, out time in making that up is limited. We must have that clearing house sheet in at a special time, specific time. Of course, the boys making that record are working against time in almost all cases. In regard to putting the customer's name against that street book in our accounting system, it has no purpose, and if any discrepancies creep
138 in there, there is no check to correct them. So I do not attach any significance at all to the customer's name on the street books. Our record of the customer's account is kept in a separate set of books. (Tr. 265-266) The customer's grain ledger controls the particular account of each customer without reference to the street books at all, and would control over the street books if the street books contained entries to the contrary. To illustrate, if the street books would show an entry of 600,000 bushels in one account and the customer's ledger would show that 600,000 allocated to three different accounts, even though under control of the same person, the customer's grain ledger would control, and there would be no reason for making any corrections in the street book. None at all. The particular thing they have to record, of course, in the street book is the broker's name and the price of the contract, and the use of the street book is terminated after we have effected a clearance, a balance, let me say, of our net position at the end of the day with the clearing house. Of course on the sale side we use that as a matter of convenience to figure the tax that we pay, the stamp tax, the federal tax. After arriving at our net position with the clearing house, at the conclusion of each day's operations, the street book could be destroyed, so far as our accounting system is concerned. If any one were to call us with reference to the condition of his or her account, we would consult either with the margin record or the customer's grain

ledger. It would not be necessary to refer to the street book in any way. (Tr. 266-267) We never did refer to the street book at all.

Redirect Examination.

The customer's name appears in the street book because that is required by law, by the Grain Futures Act. The
139 Grain Futures Act requires that you keep a record of the parties to the contracts as they are executed in the pit. We put the initials of Account No. 20 on the street book to show for whom that transaction was made, but as I say, there is no check on that entry in the street book, and discrepancies will creep in there. (Tr. 268-269)

As far as we and our customers are concerned, the financial ledger and the grain ledger are all that is necessary. In order to comply with the government requirements to see who the transactions were between, that is the only purpose of the street book.

This stamp tax that I mentioned is figured from the street book merely as a matter of convenience. It could be fitured otherwise. Our practice is to figure it, of course, on the "sold" side of the street book and the denomination of number of the account to which that tax was charged appears on the street book. During the years 1930 and 1931 Bartlett-Frazier Company made daily reports to the Grain Futures Administration concerning accounts other than Mr. Cutten's, and I understand at that time that if the customers had open commitments in any futures in excess of 500,000 whether it was a grain firm or an individual, it was our duty to report that as a special account. (Tr. 269-270)

We realized that Mr. Cutten was our customer in Account No. 7 and No. 20. I do not know that in 1930 that account No. 20 itself had in excess of 500,000 bushels many days that were never reported by the Bartlett-Frazier Company. I would not say that is not the fact. I know this; it should have been reported and our clerks were instructed to report it. I do not know that in 1930 Account No. 7, considered alone, had in it in excess of 500,000 in any certain futures that were not
140 reported to the Bartlett-Frazier Company. The clerk's instructions were to report those accounts individually. (Tr. 270) On April 1, 1930 Number 2 account was short 200,000 July wheat. D. S. account was short 400,000 and Maude Cutten account was short 200,000. On April 2, 1930

1,500,000 July wheat was brought, making the Maude Cutten account long 100,000, D. S. account long 200,000, Number 7 account long 125,000 and Number 20 account long 275,000. If those accounts had been combined on April 1 and 2, they would have both on both dates exceeded 500,000 bushels. (Tr. 273-274)

I have guarantees here for the accounts M. C., D. S., Number 7 and Number 20. I do not have one for Mrs. Number 7.

The document purporting to be a letter to Bartlett-Frazier Company signed by Arthur W. Cutten and marked Exhibit 55 is in the files of the Bartlett-Frazier Company. It was signed by A. W. Cutten.

Mr. Tierney: Complainant offers and reads in evidence EXHIBIT 55, as follows, on the letterhead of Bartlett-Frazier Company, Grain and Provision, 111 West Jackson Boulevard, Chicago, April 24, 1928". These are short and I think it will be better to read them and give them back:

"Bartlett-Frazier Company,
Chicago, Ill.

Gentlemen:

I request you to open the following account on your books: Joseph and Ruth Shirley, account No. 32, and Maude Cutten.

And I hereby acknowledge my full responsibility for all transactions entered into these accounts in the same manner as if the said transactions were entered on your books under my name.

Yours very truly,
A. W. CUTTEN

Witness: F. D. Wade."

141 Mr. Tierney: The Complainant offers and reads in evidence EXHIBIT NUMBER 56, a letter dated June 16, 1930, on the letterhead of Bartlett-Frazier Company, as follows,

"Bartlett-Frazier Company,
Chicago, Illinois.

Gentlemen:

On February 4, 1930, I requested you to open an account in your books for account 20 and on February 27, 1930, I requested you to open up an account to be known as 'D. S.' ac-

count. And I hereby acknowledge my full responsibility for all transactions entered into these accounts in the same manner as if said transactions were entered in your book under my name.

Yours very truly,

A. W. CUTTEN

Witness: F. D. Wade."

I do not have the letter of February 24, 1927, referred to in that letter. I believe they were verbal requests. (Tr. 275-276)

MR. CHARLES D. PRESCOTT, called on behalf of the Complainant, duly sworn, testified as follows:

Direct Examination.

My name is Charles D. Prescott. I am a member of the firm of James Kidston and Company, a partnership. My position and occupation with the Kidston Company is bookkeeping work mostly. I have charge of the books and records. (Tr. 278)

The Arthur W. Cutten account with our firm was No. 8. We had a number 59 account, Ralph J. Cutten. (Tr. 279)

Exhibit 57, consisting of six pages, is a part of the records of James Kidston & Co. and the customer's ledger page of Account 8. Exhibit 58, consisting of seven pages, are 142 part of the records of James Kidston & Co., and the financial ledger sheets of Account 8. Both 57 and 58 are a part of the permanent records of Kidston & Company, and kept under my supervision. Number 57 is what is known as the grain ledger as well.

Mr. Tierney: Complainant offers in evidence EXHIBIT 57 identified by the witness, and also EXHIBIT 58 identified by the witness.

Mr. Magner: The same objection.

Referee: Objection overruled. Complainant's Exhibits 57 and 58 will be received.

(Respondent excepts.) (Tr. 280)

Exhibit 59 is a part of the records of James Kidston & Company and the grain ledger sheet for account No. 59. Exhibit No. 60 is the financial ledger sheet of Account 59. These Exhibits 59 and 60 are part of the records of James Kidston & Company, kept in the regular course of business.

Mr. Tierney: Complainant offers EXHIBIT 59 and EXHIBIT 60 identified by the witness.

Mr. Taylor: The same objection.

The Referee: They will be received.

(Respondent excepts)

Exhibit 61 is known as the street sheet, covering transactions of that day. It shows the daily transactions in futures with customers, on the Board of Trade of the City of Chicago. (Tr. 281)

Mr. Tierney: The Government offers EXHIBIT 61, identified by the witness.

Mr. Taylor: The same objection.

The Referee: It will be received.

(Respondent excepts)

On this Exhibit 61, which is the street book showing daily transactions, corn was sold for Account No. 8 or 8 Spe-
143 cial. One hundred and ninety-five was sold for No. 8. I notice the writing of "Special".

Q. That appears to have been written at later time than the figure No. 8, doesn't it? (Tr. 282)

A. Not necessarily.

Q. How does it appear to you?

A. It has been made "Special." I don't know when it was put in.

Q. Does it appear to be in—

A. It might have been put in the same day.

Q. It might have been put in the same day?

A. Yes.

Q. Does it appear to you as though it were put in at the same time?

A. It is different writing there altogether. The clerk entered these here. That is my writing there, "Special."

Q. I wonder if I can just get a fair answer. Does it appear to you that the "Special" was written in after the figure "8"?

A. After the figure "8", yes, sir.

Q. Some time after?

A. Not necessarily some time afterwards.

Q. Do not quibble with me. I am following you all right, The "8" was put down first?

A. I do not know that it was the same day if that is what you are driving at.

Q. Does it look to be done with the same ink and at approximately the same time?

A. Not the same ink, no, sir. (Tr. 283)

144 Q. It was not done with the same ink, was it?

A. It is a different man's handwriting there. They used different inks probably.

Q. Who wrote "Special" there?

A. I did.

Q. And who wrote the number "8"?

A. Our clerk.

Q. Do you know what the position of Account No. 8 was before that transaction occurred on that day?

A. I cannot say that I do, no, sir.

Q. Have you any record here that would indicate it?

A. That would show on the customer's sheet, I believe.

Q. You have a ledger. Will you step down here?

A. Number 8 was short 300 December corn up to this time.

Q. That is No. 8?

A. Yes, sir.

Q. And there were sold on that day 200 of the same future, was there not?

A. It was 195 sold for No. 8.

Q. Look at your street book and tell me how much was sold that day, as originally entered for No. 8.

A. As originally entered, 200 for No. 8.

Q. Yes, No. 8 had at that time 300.

A. Yes, sir.

Q. And if the 200 had been put into the No. 8 account, it would have had the 500,000, wouldn't it?

A. Correct.

Q. Then 195 was put in.

A. Yes, sir.

145 Q. Five of it was left out?

A. Yes, sir. (Tr. 284)

Q. And it gave that account 495,000 and not 500,000?

A. Yes.

Q. Who is No. 8 Special?

A. Ralph J. Cutten, the same as 59.

Q. Did you have any other accounts than No. 8 Special?

A. No, this account was originally designated as No. 8 Special.

Q. Which account was originally designated?

A. This Ralph J. Cutten.

Q. Do you have a grain ledger sheet for No. 8 Special?

A. No, sir.

Q. Do you have a financial ledger sheet for No. 8 Special?

A. No, sir.

Q. The only transaction that you have on your books in 1930 and 1931 for No. 8 Special is this 5,000 corn that went in on that date, is that right?

A. Yes, sir.

Q. Did you have any guarantees for No. 8 Special?

A. Not that I know of.

Q. Not that you know of?

A. We have a guarantee for Mr. Ralph Cutten.

Q. And that 5,000 December corn appearing on the street book to have been sold by correction in the book for 8 Special was actually posted to the account No. 59, was it not?

A. Correct. (Tr. 286)

Q. How long did that five stay in that account?

146 A. It was bought the next day.

Q. Do you know who gave the order to put the five into 8 Special?

A. I presume I got my instructions from Mr. Kidston.

Q. Which Kidston?

A. I do not recollect now.

Q. Which Kidston?

A. Mr. R. H. Kidston, I presume.

Q. Is he here in the court room now?

A. Yes, sir.

Q. And there was no margin for No. 8 Special as such?

A. No.

Q. Do you know who gave the order on that date for the sale of 200 December corn?

A. No, I do not.

Q. Who gave the orders for Account 59 and No. 8?

A. I presume Mr. Cutten did.

Q. Arthur W. Cutten?

A. I suppose so.

Q. You know that to be a fact, don't you?

A. I never got the orders myself. The orders come down on the floor over the phone. I would not get that.

Q. You had no transactions with R. J. Cutten directly?

A. No, sir.

Q. Did you ever see him?

A. No, sir.

Q. Do you know who he is?

A. I presume he is related to Mr. Cutten. I don't

147 know whether he is a nephew or brother.

That is Ralph J. Cutten. I believe Mr. Kidston has

guarantees of Account 59. I have not myself. I do not think there were any profits in that 59 account. It had losses I could not say right now who paid the losses. I don't know. It is my judgment that Mr. Cutten gave the orders for Account 8 and R. C.

Mr. Tierney: There is just this one thing, Mr. Taylor: We have not asked these people to produce their street book showing all these transactions for these years 1930 and 1931 in wheat futures, and we will not ask them to bring them in, unless you make objection that our reports that we expect to introduce are not based upon the records in evidence. Now, if you want us to bring all those street books in or if you want to put us to the trouble of bringing all those street books in, we will have to have them do that.

Mr. Taylor: No. I have been agreeable to checking accounts with you right from the start. I see no reason for dragging the books over here.

Mr. Tierney: We can check the figures all right. I think that is all then, Mr. Prescott. (Tr. 288-289)

Cross-Examination.

We have had an account on our books for some time known as Special No. 8, and prior to the transaction about which I testified, in which 5,000 bushels had been put into the special Number 8. At that time it was a dormant account, that is, there was no trading going on in it. But formerly we had an account on our books which at one time was an active account, known as Special No. 8. We didn't just out of a clear sky create a new account, Special Number 8, for those 148 5,000 bushels of corn that was allocated to this account.

I was with James Kidston & Company in 1930 and 1931. (Tr. 290)

Q. And did the representatives of the Grain Futures Administration come to your office during those years and examine into your books?

Mr. Tierney: That is objected to as not proper cross examination and wholly irrelevant and immaterial.

The Referee: Overruled.

(Complainant excepts)

The Witness: They have been there quite a number of times. I couldn't say just the dates they have been there. They have been there quite a number of times, Representa-

tives of the Grain Futures Administration came to our office and went through our books in 1930 and 1931.

Q. And they were familiar with these transactions recorded in and evidenced by the books which you have produced here this morning?

Mr. Tierney: Just a minute. That is objected to as calling for his incompetent opinion and conclusion and not cross examination and wholly irrelevant and immaterial, and let this objection stand to all such subsequent examination. (Tr. 291)

Mr. Taylor: All right.

The Referee: Objection overruled.

(Complainant excepts)

The Witness: Yes, they were there examining the books.

Mr. Taylor: And they were familiar with these accounts which are evidenced by the books which you have produced here this morning and which have just been introduced in evidence?

A. I believe so.

They never said anything to me in the way of sugges-
149 tions as to changes that should be made in the manner in which these account were carried by us. They never criticized, in any way, the manner in which these accounts were set up in our books. They never discussed with me, in any way, the matter of reporting on these accounts. They were familiar with the whole picture as presented by the accounts and as appeared in our books. Members rate of commission was charged under account Number 8 and non-members under Account 59. (Tr. 292-293)

R. H. KIDSTON, called as a witness by complainant, duly sworn, testified as follows:

Direct Examination.

My initials are R. H. I am a member of the James Kidston & Company firm. I have with me a document guaranteeing Account 59. (Tr. 294) This letter marked Exhibit No. 62 is a record of James Kidston & Company. That is Mr. A. W. Cutten's signature there.

Mr. Tierney: At this time the complainant offers and reads in evidence EXHIBIT 62, as follows:

"Chicago, August 1, 1931.

"Messrs. James Kidston & Company,
1632 Board of Trade Building,
Chicago, Illinois.

Gentlemen:

"I have requested you to open and carry accounts on your books in the names of A. W. Cutten, known as 8 account, and Ralph J. Cutten, known as 59 account. In consiceration of your so doing, I hereby guarantee said account and agree that I will be fully responsible for any or all trades now open or to be opened in these accounts. In the event of my death James Kidston & Company are given full authority to close all open trades at their discretion.

Yours very truly,
A. W. CUTTEN."

150 *Cross-Examination.*

The Ralph Cutten account had previous trades in it some years ago and was known as 8 Special account and just to clear James Kidston & Company on it, I merely want to state where it showed on the street book this morning when Mr. Prescott—where you showed some of those trades were for 8 Special, he naturally would put those in that account, because we had not had a trade in the Ralph Cutten account for several years, and naturally when a trade was open in that account, a new trade was opened, he naturally made it 8 Special, until a little later I called his attention to the fact that Mr. Cutten had requested that that account now be called 59 account rather than 8 Special. He had some good reason for doing so. I don't know what it was. I presume to keep his own books straight. (Tr. 295-296-297)

We dealt with these two accounts as we would with any two separate and distinct accounts, and treated them as such. They were set up in our books as separate and distinct accounts. In reporting, in compliance with the requirements of the Grain Futures Administration, we reported on them as separate and distinct accounts. Commissions on these accounts were different; on Mr. Cutten's account they were regular member's rate and on any other account that might have been opened as a non-member, non-member rates were charged.

I have known Mr. Cutten some 25 years (Tr. 298) and during that time we have had some business from him.

Mr. Taylor: Do you recall meeting with representatives of the Grain Futures Administration Bureau in 1930 and 1931, in your office?

Mr. Tierney: That is objected to because it is not cross examination. If they want to make this witness their
151 own, that is one thing, but I merely asked him to identify a document and offered it in evidence.

The Referee: Well, I think the Commission can determine whether or not it is cross examination or direct examination. I feel that the witness may answer.

(Complainant excepts)

The Witness: Yes, sir, quite often.

Mr. Taylor: And do you recall as to whether or not they examined into these accounts which you have defined as account No. 8 and accounted No. 59? (Tr. 299)

Mr. Tierney: Same objection.

The Referee: Objection overruled.

(Complainant excepts)

The Witness: Yes, they did.

Mr. Taylor: They were familiar with the general status of those accounts?

Mr. Tierney: Same objection, as calling for his incompetent opinion and conclusion.

The Witness: At that time.

The Referee: Objection overruled.

(Complainant excepts)

Mr. Tierney: Let the Referee say "overruled" before you go ahead.

Mr. Taylor: All right.

The Referee: Objection overruled.

(Complainant excepts)

Mr. Taylor: Did they ever comment on changes and corrections that might be made in these accounts?

Mr. Tierney: Same objection.

The Referee: Objection overruled.

(Complainant excepts)

The Witness: Never to my knowledge.

Mr. Taylor: Did they ever suggest that these accounts
152 should be consolidated?

Mr. Tierney: Same objection.

The Referee: Objection overruled.

(Complainant excepts) (Tr. 300)

The Witness: Do you mean the men coming into my office?

Mr. Taylor: Yes.

The Witness: No, they never suggested it.

Q. And they never took exception to the accounts being carried in the manner in which you were carrying them?

Mr. Tierney: Same objection.

The Referee: Objection overruled.

(Complainant excepts)

The Witness: No, sir.

I have been engaged in the Grain business 30 years. I am a member of the Chicago Board of Trade, and our firm carries on business and clears through the Board of Trade.

Q. Now, do you know the general reputation borne by Mr. Cutten on the Street, and on the Board of Trade, as relating to his being a constructive or destructive factor in grain trading?

Mr. Tierney: Just a minute now. We object to that. In the first place, it is not proper cross-examination. In the second place, such evidence, at this time, in this hearing, is improper in so far as Mr. Cutten has not taken the stand, and I insist this testimony is clearly out of order at this time.

The Referee: Objection overruled.

(Complainant excepts)

The Witness: I might say, in my dealings with Cutten, over a matter of some 25 years, possibly, and I may be right or wrong in that exact number of years, I have found him a very honorable gentleman indeed. In fact, I don't know of any man that I have ever had nicer dealings with. He is per-
153 fectly on the square and a very generous man. I think he has helped hundreds of people and I think a lot of it has been done in this way, that he has been importuned time and again, to my knowledge, by men who have been unsuccessful themselves in grain trading, and he has put them in the market and made them money. In fact, I believe Arthur Cutten is a much bigger man than a great many of these critics would have you think.

Mr. Taylor: Do you think the influence of Mr. Cutten in the market or in grain trading is constructive or of a destructive nature?

Mr. Tierney: Same objection, Mr. Referee. (Tr. 301-302)

The Referee: Objection overruled.

(Complainant excepts)

The Witness: As to that I would say this: that in my acquaintance with Mr. Cutten, 99 times of 100 he is a bull on the market. In other words, he is long in buying grain. That has been his practice over a number of years and I think

it can be proven without a doubt. And in that way I think he has helped markets time and again, for over 25 years. He has been a real constructive force, yes, that he has been a very constructive force in the grain market.

Mr. Taylor: It is a fact, is it not, Mr. Kidston, that the influence that you describe of Mr. Cutten, and the constructive character of his operations lead towards higher prices of commodities, do they not?

Mr. Tierney: Same objection.

The Referee: Objection overruled.

(Complainant excepts)

The Witness: Yes, sir. I would say that definitely.

I overheard the testimony of Mr. Prescott this morning and heard about the allocation of 5,000 bushels of December corn into the Special 8 account. The orders for placing that came from Mr. Cutten's office by telephone. (Tr. 303) The communication on the placing of the 5 corn in the Ralph Cutten account, came by telephone from Mr. Cutten's office some
154 time after the close of the Exchange.

We had no blanket instructions from Mr. Cutten at any time, that any instructions we had to place grain in any other than his own account came from his office, on his order, at the time or the time the order was executed or a little later in the day. Kidston & Company did report everything that needed to be reported.

155 *Redirect Examination.*

Mr. Cutten may have been bearish on the market in 1930 and 1931, although I would have to look up my records to determine whether he was long or short any one day, in my office. I don't know anything about what he was doing with somebody else. (Tr. 305 and 306.)

Prior to 1930 and 1931 I base my answer that he was bullish during those periods on the fact that I might be able to show on my books, or if you ask some of those other firms that he was in the habit of trading with, as to his position—my guess would be that his position was always long. In my answer that he was bullish 99 percent of the time, I have considered the years 1930 and 1931. Over a period of twenty five years I would consider ninety-nine out of a hundred times he was bullish. That is inclusive of 1930 and 1931, and if it developed that he was short selling 89 percent of the time in 1931, I would still say that he was bullish for 99 percent of the time,

for a period of twenty-five years. I base that answer that he was bullish in 99 percent of the time on this fact: There are certain men who can trade one way in any market and cannot trade in the other. There are some men who are always bullish and want to put the market up. I do not consider him as good a trader on the short side of the market as he is on the long side of the market. The stories in my magazines have not influenced me in my opinion, nor any stories that have appeared in any of the periodicals or newspapers. I feel that I have been in the business long enough to form my own opinion without reading any magazine articles. (Tr. 307 and 308)

I don't know anything about his trade in other firms, except possibly from hearsay. Well, it is not exactly guess that he was a bull, no. I would say from my experience on my books, plus hearsay, plus what Mr. Cutten might have said to me
156 inadvertently, or others, that I might have gained that impression. I have no definite information as to the truth of that statement. I would be a little difficult to prove it, I imagine. His accounts on other books, as well as on our books, were carried under numbers and names.

I can't say that I heard all of Mr. Uhlmann's testimony. I heard a large part of it.

I have been connected with the Board of Trade for some thirty years. (Tr. 309 and 310)

I am familiar with the language that is peculiar to the grain trade between commission firms. I heard Mr. Uhlmann talking about a "Kitty." I don't know what Mr. Uhlmann means by that expression. In fact, I think we are in a very dignified business. I think it was a facetious remark, a rather facetious remark on Mr. Uhlmann's part.

F. H. YOUNG, called as a witness by the Complainant, duly sworn, testified as follows:

Direct Examination.

My initials are F. H. I live in Chicago. I am auditor for Jackson Brothers, Boesel & Company. I have been in their employ eleven years. During the years 1930 and 1931 I was auditor of the Jackson Brothers, Boesel & Company books. I am familiar with them.

I have here books of Jackson Brothers, Boesel and Com-

pany. Mr. Stern is out of town now. I have the Street Book for 1930 May wheat. (Tr. 311, 312)

Complainant's Exhibit 63 is binder, in which are included street book sheets of Jackson Brothers, Boesel & Company, covering 1930 May wheat, 1930 July wheat, 1930 September wheat, 1930 December wheat and 1932 May wheat futures affecting Accounts 40, 209-C, 209-C Special, 210-C, L. F. C., R. C., 211-C and 212-C. (Tr. 313)

157 Complainant's Exhibit No. 64 is a customer's ledger, customer's grain ledger, and has to do with the same accounts that I enumerated, with respect to the street book.

Exhibit 65 are what I call customers money ledgers, sometimes spoken of in this record as financial ledgers. That has reference to Account No. 40 with Jackson Brothers, Boesel & Company.

Exhibits 66 to 72 are similar records with respect to different accounts.

Mr. Tierney: At this time Complainant offers in evidence EXHIBIT 63, street ledger identified and described by the witness, Mrs. Young, Exhibit 64 being a grain ledger described by the witness, Mr. Young, and Exhibits 65 to 72, both inclusive, being the money or financial ledger sheets of Jackson Brothers, Boesel & Company, all with respect to accounts heretofore enumerated.

Mr. Taylor: Mr. Chairman, to save the record and to have time, cannot it be understood that we make no objections from the standpoint of identification or authenticity of any of the books that you have or are about to offer.

Mr. Tierney: That is agreeable.

Mr. Taylor: But reserve unto ourselves an objection on the ground of relevancy, to be presented in a motion to strike at the conclusion of your case.

Mr. Tierney: That will be perfectly all right.

Mr. Taylor: Is that agreeable to the Referee?

The Referee: Yes, that is agreeable to the Referee. COMPLAINANT'S EXHIBITS 63 to 72, inclusive, received.

Account Number 40, on the books of Jackson Brothers, Boesel and Company, was that of Arthur W. Cutten, also Account C-209, Account C-209 Special, Account C-210, and Account 49.

158 Account L. F. C. might have been L. F. Cutten; Lionel F. Cutten.

I am acquainted with Russell L. Stern's signature. For the purpose of refreshing my recollection, I will look at Exhibit

73. I think it is Lionel F. Cutten. I don't think this is right. It may be. I do not think the identification given by Mr. Stern, that that was Arthur W. Cutten's is correct.

Mr. Stern is in New York. He is gone for about a month. He was a partner with the firm. I am familiar with his signature. This is his signature. And when I say that is his signature I have reference to Exhibit 73. I don't know anything about the 100 Account. (Tr. 316 and 317). Mr. Stern was a partner in 1930 and 1931. The firm has been dissolved this year. Mr. Russell Stern was a partner up until the dissolution. (Tr. 318)

Cutten was charged member's rate on 209-C, six and a quarter on five. (Tr. 320) I am positive that the 209 account was charged a member rate of commission. There was a transfer on September 29, 1931, from the 209-C account of $21,253.24 to R. C. account, Ralph Cutten.

On the first sheet following the tab "G" in Exhibit No. 64 the figures "12.50" and "5.50" on the top of the page mean we charged Ralph Cutten $12.50 for every 5,000 bushels of grain and the "5.50" means that Mr. Cutten, who probably brought in the account, was entitled to a refund of the commission because, according to the rules of the Chicago Board of Trade, a member bringing in non-member business to a firm is entitled to one-half of the commission. I notice that on other pages of the R. Cutten account that is what those figures "12.50" and "5.50" have reference to. I find that all the way through this R. Cutten account.

159 *Cross-Examination.*

In testifying that certain of these accounts are Mr. Cutten's or are the property of some one else, I am testifying only from information that I derived from these books. I have never talked to Mr. Cutten. I never had any instructions from Mr. Cutten relating to the management or control of these accounts. (Tr. 321 and 322)

Q. It is a practice, is it not, Mr. Young, from an accounting standpoint, to transfer funds in a firm such as Jackson Bros., Boesel & Company, from grain to stock accounts and from stock to grain accounts, as funds are required, to support the respective accounts?

A. Yes, sir.

Q. There is nothing unusual about that in the accounting practices that prevail in your business?

A. No, sir.

These accounts that I have presented here and which have been introduced in evidence relate solely and alone to grain operations and grain transactions. It is possible that any withdrawals from this grain account may have gone to stock accounts and vice versa. And any credits appearing thereon might very well come from stock accounts of the respective person having the grain or the stock account. (Tr. 323)

I was in charge of the Jackson Bros. Boesel books in 1930 and 1931, and at that time or during that time, representatives of the Grain Futures Administration called to examine our books and check on them. That was done at rather frequent intervals. And during that period of 1930 and 1931 and prior thereto, when these representatives of the Grain Futures Administration called on me to examine our books, they had access to these accounts that have been placed in evidence, and they examined these accounts. (Tr. 324)

160 ARTHUR F. LINDLEY, called by Complainant, duly sworn, testified as follows:

My name is Arthur F. Lindley. I live in Chicago. I am a member of the firm of Clement, Curtis & Co. (Tr. 326) I am Chairman of the Business Conduct Committee of the Board of Trade of the City of Chicago. The Business Conduct Committee is the Committee that has to see that the rules and regulations are carried out. I have been Chairman of the Business Conduct Committee since January of this year. I was a member of the Committee in 1933 and 1932, but not Chairman. I am President of the Board of Trade Clearing Corporation, and I am also a partner in the firm of Clement, Curtis & Company. (Tr. 327)

Joseph Kessler, a partner of our firm, has charge of the books and records. I am familiar with our books and records.

I have brought here the books and records that were called for in the subpoena.

During the years 1930 and 1931 nine accounts in the Cutten group were carried with Clement Curtis Company. They were carried in some cases in individual names, and in some cases by simply designation. Those names and symbols were A. W. Cutten account; C. W. A. account; 209 account; Number 785 account; S. Special account; Ralph J. Cutten; Maude Cutten; and Paul Bloomer; and one account here that you did

not ask for, having only one transaction, number 787. (Tr. 328 and 329)

The A. W. C. account is designated as A. W. Cutten. I don't know whether the C. W. A. account was Arthur W. Cutten's, or not. Mr. Kessler was a partner of our firm. Yes, we looked to Mr. Cutten for responsibility on the account. Exhibit 74 is signed by Clement, Curtis Company, by Joseph R. Kessler. I think this was not intended to identify the account as Mr. Cutten's personal account but to identify that the mail went to Mr. Cutten on that account. (Tr. 330) I don't know
161 whose account C. W. A. was. So far as we were concerned, Mr. Cutten was responsible to us for the C. W. A. account, as the S. Special account, the 209-C account and number 785 account. (Tr. 331)

The Ralph Cutten account had individual protection, although Mr. Cutten did guarantee it. The same is true of Maude Cutten's account, although he did guarantee it.

The Ralph Cutten account, the Maude Cutten account were guaranteed by Arthur W. Cutten, and the orders came from Arthur W. Cutten.

This book marked Complainant's Exhibit 75 is a bound volume of the various wheat futures for the year 1930. I do not mean by that transactions necessarily during 1930, but the futures that expired during the year 1930, and it is the usual street book to cover the daily transactions. (Tr. 332)

Exhibit No. 76 is the so-called street book for wheat futures expiring in the year 1931, and that is kept in the same manner and form.

Exhibit 77 is the so-called street book for wheat futures expiring in the year 1932.

Exhibit 81 is the grain trades ledger sheets of the account of Maude Cutten.

Exhibit 82, consisting of two sheets, are the financial ledger cards of the commodity account of Maude Cutten with Clement-Curtis.

Exhibit 83 is the grain trades ledger account of Ralph Cutten with Clement-Curtis.

Exhibit 84 is the financial ledger card of Ralph J. Cutten's account.

Exhibit 85 is the grain trades ledger card of S. Special account.

Exhibit 86 is the financial ledger card account of S. Special account.

162 Exhibit 87 is the grain trades ledger account of No. 785 account.

Exhibit 88 is the financial ledger card of No. 785 grain account.

Number 89, consisting of two sheets, is the grain trades ledger cards of No. 209 account.

Exhibit 90, consisting of two sheets, is the financial ledger cards of No. 209 grain account.

Exhibit 91 is the grain trades ledger card of C. W. A. account.

Exhibit 92 is the financial ledger card of C. W. A. grain account.

Exhibit 93, consisting of eleven cards, is the grain trades ledger cards of the account of Arthur W. Cutten.

Exhibit 94, consisting of nine cards, are the financial ledger cards of the grain account of Arthur W. Cutten.

Mr. Tierney: At this time the complainant offers in evidence EXHIBIT 75, street book of Clement, Curtis & Company, identified by Lindley; EXHIBIT 76, identified by Mr. Lindley, the same being a street book of Clement-Curtis Company, and EXHIBIT 77, street book of Clement-Curtis Company, identified by Mr. Lindley.

The Referee: They will be received.

Mr. Tierney: The complainant also offers at this time EXHIBIT 81, identified by Mr. Lindley as the grain ledger of the account carried under the name of Maude Cutten; EXHIBIT 82, financial ledger account, carried under the name of Maude Cutten, and EXHIBITS 83 to 94, both inclusive, being grain ledger cards and financial ledger cards of the accounts carried under the name of Ralph Cutton, S Special 785 account, 209 account, 209-C account, C. W. A. account, and A. W. Cutten account, with the firm of Clement-Curtis, and all identified by Mr. Lindley.

The Referee: Complainant's Exhibits 81 to 94, inclusive, will be received.

163 Mr. Arthur W. Cutten gave the orders for purchases and sales in the accounts, the records of which I brought here. Mr. Arthur W. Cutten was the one who guaranteed these accounts. He guaranteed the accounts in writing. (Tr. 333, 334, 335, and 336) The item appearing on card marked with our number 19, and a part of Exhibit 93, under date of August 19, 1931, indicates that on August 18th there was bought by us for the account of Arthur W. Cutten 65,000 bushels of December wheat at 48¼, and 135,000 bushels at 48⅛,

and that on October 8, 1931, there was sold by us for the account of Arthur W. Cutten 65,000 bushels of December 1931 wheat at 46⅞, and 135,000 bushels at 46⅞. That trade does not appear on our street books under date of August 18th. Those trades do appear on our street book under date of October 8, 1931. The correct date is the date that appears on the street books, and the street book is the one that shows between what firms the transaction was made and for whom.

Under date of November 1, 1930, in the ledger, Exhibit 83, there appears to have been a sale of 150,000 December wheat for Ralph J. Cutten. It doesn't appear on the street book on November 1. It does appear on November 3rd. The transaction actually occurred November 3rd, and I gather that from our street book. The street book would be correct because it is chronologically entered. The transactions are entered chronologically in the street book.

I find on our ledger, in the Maude Cutten account, a purchase of 100,000 July wheat on February 28th, 1930. (Tr. 337, 338 and 339) The purchase indicated on February 28th on our grain ledger does not appear on the street book on that date. The purpose of a street book is to keep a record of each day's transactions and the details pertaining to those transactions, the broker by whom the order was executed, the fellow member from whom purchase was made, or to whom
164 sale was made the price at which the transactions were made, the name of the customer. Those are the primary purposes.

Our street book shows that on March 22nd there was bought for the account of Maude Cutten 100,000 bushels of July wheat at $1.08 which is indicated on our grain ledger as having been bought on February 28th, (Tr. 340) I have been present here during all this hearing. I do not agree with some of the witnesses, that the Street Book, as kept by grain firms, is of no value. The street book, as a matter of utility, passes out of existence the business day after the transactions are made, but as a source of original entry, and a record in case of dispute or litigation, it is a source record and I would say as a source record it had a value. It is the book of original entry.

In 1930 I was familiar with the rules of the Board of Trade. It was not necessary, in 1930, if a member had trades for a non-member to register with the Secretary those trades; that was put into effect in 1933. So in 1930, if I were a member of the Board of Trade and I wanted to trade through our firm, for a non-member, we would put that trade through without

any registration with the Secretary. The registration is that there is to be a division of commission with the producing member, and that did not exist in 1930. It was not necessary to register the arrangement. (Tr. 341 and 342) When Mr. Richard Uhlmann stated here that it was necessary to do that, he was in error.

Cross-Examination.

In general, the function of the Business Conduct Committee is to see that business is conducted by member in accordance with the rules of the Board of Trade of the City of Chicago, and in accordance with ethical and equitable principles. It has to do with a complaint that may result in discipline of members. The Business Conduct Committee may find
165 a set of conditions that justify the making of a charge to the directors of the Board of Trade. Of itself, it cannot discipline, but it can bring charges after investigation. (Tr. 343) Any action on the part of any of our members which might be the base of criticism would be brought to the Business Conduct Committee for recommendation of action on the part of the Business Conduct Committee. If Mr. Fitz called our attention to a member's failure to report to the Grain Futures Administration, that would be the place for it to come, if a member had not complied with the requirement. Mr. Fitz is the local representative of the Grain Futures Administration. He is in charge of the office in Chicago. Recently he brought to our attention, that is, the latter part of last year, not a failure to report on the quantitative requirements, but on a special report that was required by the Administration. He called to our attention that three members had not complied with it, and asked the Committee to see that they did comply with the requirements.

Q. And what was the procedure followed by your committee after these complaints were made by Mr. Fitz?

Mr. Tierney: Just a minute. I would like to object to this as not cross examination and wholly irrelevant and immaterial as to the question of whether Arthur W. Cutten made false reports or whether he failed to report during the years 1930 and 1931, and I would like to have this objection appear on the record of all questions of that kind, to save repeating it.

The Referee: Objection overruled.

(Complainant excepts)

The Witness: Will you read the question, please?
(Question read as above recorded)
The Witness: A. Mr. Fitz was assured that the Committee would see that these members would make the re-
166 ports, if they were required, and I personally communicated with all three of the members and the reports were made to Mr. Fitz.

I have been engaged in the grain business since 1899; thirty-five years, roughly. I have been with Clement, Curtis & Company and their predecessors from 1899 to 1915 and from 1917 down to the present date. (Tr. 344 and 345) Since the enactment of the Grain Futures Act of 1922, if I felt that our office was not complying, I would insist that it did comply. If Mr. Fitz brought to my attention any lack of compliance on the part of our office, I would immediately see that our office did comply, because it is our intention to comply with the regulations. It so happens that Mr. Fitz has contacted me a number of times where our boys, through carelessness or inadvertence, failed to do something, and I have always lent him my cooperation. We have had very pleasant relations. If he had anything to take up with our firm, I would be the normal and logical person with whom he would take it up.

I am familiar with the rules and regulations of the Grain Futures Administration, not intimately, but generally from a practical viewpoint. In 1930 and 1931 our firm reported on all accounts in our office of this group that have been introduced in evidence, the Cutten accounts, where an individual account exceeded 500,000 bushels in any one future in any one grain. We did not report as a combined group. These accounts were not probably considered by us as under the ownership of one person. I looked to the account of Maude Cutten as her individual property. It is not uncommon, in the custom and practice of our business, that a man may guarantee an account, may furnish the margin for that account, and at the same time give the orders for the transactions in that account, and still the property interest, the ownership of that account be in a third person, or be in another person. To
illustrate; if prior to July of last year, I were to open
167 an account in the name of my wife, and if I furnished the margin and guaranteed the account and handled the trades in that account, our firm would consider that to be an individual account of my wife and in no way coupled with my account, if I had an account. I doubt if we would treat it that

way now. We have since been put on notice that a control account—and I have not yet found out what that word "control account" means from a legal standpoint—but I think since the summer of last year we would probably inquire whether the account should not be reported because controlled by another individual, if that other individual also had another interest. (Tr. 346, 347 and 348) I think the regulation was made prior to 1933, but they came to my attention in 1933. It was the first time that it came to my attention. Mr. Cutten paid the member's rate of one-eighth of a cent a bushel, and on all of the other accounts a quarter of a cent a bushel was paid.

Q. And what would that signify or indicate to you?

Mr. Tierney: That is objected to as calling for his incompetent opinion and conclusion.

The Referee: Objection overruled.

(Complainant excepts) (Tr. 349)

The Witness: It would indicate to me that there was some person other than Mr. Cutten interested in the account.

Mr. Cutten never gave me any blanket instructions or orders relating to the maximum amount of grain or wheat, that would be held in any one of these accounts. All allocations were specifically made by Mr. Cutten or through his office. These orders would be given at various times. Sometimes at the time the order was given he would designate what account it was for. Very frequently an order would be given,

and prompt execution of the order would prompt me not
168 to stop to ask questions—and I would proceed with the execution of the order, and after the order was executed, as soon as I could contact Mr. Cutten, which, in many cases, was sometimes after the order was executed, I would obtain from him the allocation of the order to the accounts to which he wished it allocated, as Mr. Uhlmann described. I could repeat his description. Very frequently Mr. Cutten would give orders directly to some broker on the floor of the Board of Trade to make certain transactions and give them up to Clement, Curtis Company, and the cards would come down to us and we would have to find out from Mr. Cutten, when it was feasible to do so, when we could contact him, what the allocation of the account was, because we were not of notice what the allocation was.

Taking the first situation I have described, if Mr. Cutten were to give me, let us, in the morning an order to buy, let us say, half a million bushels of a given option, I would endeavor to have an immediate execution of that order if the

market were open. After the execution of that order it would be entered on our street book, and if allocation had not been made it would be entered in blanket and the allocation left open. (Tr. 350 and 351) It might be entered on the street book prior to my being able to see Mr. Cutten and obtain from him his order on the allocation over the various accounts. Our records are evidence that Mr. Cutten never said to me that we were to see to it that no one of these accounts was to run in excess of the reportable limit under the Grain Futures Administration requirements. (Tr. 352) I say that because of the fact that we have reported numerous instances. Any time that any one of these accounts was reportable under the requirements of the Grain Futures Administration, we have reported them. When an individual account was 500,000 bushels or over, I am certain that we reported that standing.

That relates to any one of the individual accounts; not 169 considered as a group.

Q. That is right. Your office has always cooperated with the representatives of the Grain Futures Administration has it not?

Mr. Tierney: That is objected to as wholly irrelevant and immaterial.

The Referee: Objection overruled.

(Complainant excepts)

The Witness: Yes, sir. (Tr. 353)

I never talked to Mr. Cutten about his reporting of trades as evidenced by his own books, until this action began. I haven't the slightest idea of what he did with reference to reporting excepting as I have seen documents bearing on this action.

Q. Do you feel, Mr. Lindley, that the Grain Futures Administration was lax in acquainting or keeping acquainted with the Board of Trade and its member with those rules and regulations?

Mr. Tierney: Just a minute. Now, this is objected to as wholly incompetent, irrelevant and immaterial and it does not tend to disprove the fact that Mr. Cutten failed to report and make false reports during the year 1930 and 1931. That is the issue here. And this is clearly not cross-examination and I think once in a while the Referee should sustain some of the objections. There is one that will give the Referee an opportunity to sustain.

The Referee: Objection overruled.

(Complainant excepts) (Tr. 354-359)

A. It would be unfair for me to criticize the Grain Futures Administration as being lax, because I do not know what publication, what publicity they gave to the ruling of 1926, or any interpretation of it. All I do know is that I was not aware of the ruling, nor any interpretation of it, until some time late in 1933, and by inquiry I find that the same lack
170 of knowledge was rather general. It would not be fair for me to criticize the Department, because I do not know what publication they made of the ruling or any interpretation of it.

It made no difference to our firm in which account any of these given transactions were placed, except it affects our monetary interest. If it went into a non-member's account, we would get twice as much commission as if it went into Mr. Cutten's account. I do not feel that would influence me in any way in the situation. I never gave any clerks any orders with reference to the spreading of these transactions over the various accounts until after I received orders from Mr. Cutten. The allocations were all made by Mr. Cutten. We never had any agreement nor made any agreement with Mr. Cutten so as to keep each account below the 500,000 because we repeatedly reported excesses. I had no knowledge of what Mr. Cutten was doing. It is common practice to use designations for defining accounts. That is not only in our firm, but it is generally the practice throughout the business. These accounts being carried under the designation of letters and numerals was not suggested by me or any member of my firm. Mr. Cutten indicated what accounts he desired to open and conduct. It was all under the orders and instructions of Mr. Cutten.

Mr. Taylor: Q. What is your opinion, Mr. Lindley, of the general reputation borne by Mr. Cutten on the Street and on the Board of Trade, among its members, as relating to his being a constructive or a destructive factor in grain trading?

Mr. Tierney: That is objected to for the reason that it is not cross-examination. The witness has not shown himself competent to answer the question. It is wholly irrelevant and immaterial to the charges in the complaint.

The Referee: Objection overruled.

(Complainant excepts)

171 Witness: You are now asking me his reputation as to acting on the advancing side more often than on the declining side?

Mr. Taylor: Yes. (Tr. 360, 361 and 362)

A. I think his reputation is that by nature he is an operator on the advancing side rather than on the declining side. His personal tendencies are in that direction and his success has been in that direction.

My opinion would be that more often he operates on the advancing side of a market than on the declining side. I can only explain the discrepancies in the accounts about which I testified, the fact that on the grain ledger the transaction would show as of one date and on the street books would show as of another, as inexcusable carelessness on the part of our clerks. It is simply a clerical error. It does not in any way affect the account involved as to money or dollars, but it makes an imperfect record. If you ever check up the account, it makes an imperfect record. It would not affect the monetary balance on our books, but it makes an imperfect record if you ever want to trace a transaction. It would not affect the amount of grain that was allocated to any one account. That is determined by the actual purchases and sales that are made for the account on a given day, and evidenced by our customer's grain ledger and by our street books. And ultimately, when the transaction was closed, it would be evidenced by our P & S reports. It really has no bearing in the absence of malicious intent as to whether or not any account was intentionally kept under the limit of the reportable amount under the Grain Futures Administration, simply a clerical error on the part of somebody in our organization. (Tr. 363 and 364)

172 *Redirect Examination.*

There are 120 clearing members of the Clearing Corporation, many of which have a good many accounts with customers. Many clearing members have only their own business, acting as individuals and clearing their own trades. Others have a small commission business and others have a large one. There are a number of houses that have a large commission business and, therefore, a large number of customers. (Tr. 365) Clement-Curtis would have in the neighborhood of—I doubt if Clement Curtis & Co. ever reached a thousand individual accounts. I should say perhaps four or five hundred is the greatest we have reached. However, we are only a local house and have only a local office. Houses having branches, branch offices all over the country might very well run into many thousands of accounts, like some of

the big wire houses, like Bennett and like Lamson Brothers. They might well run into thousands of accounts; and the Uhlmann Grain Company, they might well run into thousands of accounts. However, that is just a conjecture on my part. Bartlett-Frazier Company might fall into that class, also. The books and record that I have here in this hearing are with respect to about nine accounts. If I have active accounts of a thousand, I would have considerably more books to look over.

I understood the 209 account was Mr. Cutten's; he had control of it. The A. W. C. or the Arthur Cutten account was his personal account without qualification. (Tr. 366, 367) The S. Special account was under his control, but not regarded by me as his individual account.

The allocation of keeping 490 in the Arthur W. Cutten account from May 16, 1931, December wheat futures, until June 19, 1931, was the result of directions from Mr. Arthur W. Cutten.

I have no personal knowledge of what reports were requested from Mr. Cutten during the period of 1930 and 1931.

I don't know whether or not Mr. Cutten understood those
173 regulations or not. The reporting of controlled accounts came to my attention recently. It apparently is an interpretation of a regulation that was issued in 1926, which had not come to my attention. I did not say it was a new regulation. I said it first came to my attention late in last year.

Q. And those accounts that were Arthur W. Cutten's, your firm, you considered Cutten your customer, didn't you?

A. Considered him as controlling the accounts, but not necessarily the sole person interested in the account.

Q. You considered him as your customer?

A. Yes. (Tr. 368, 369)

WILLIAM J. SPRINGER, called by Complainant, duly sworn, testified as follows:

Direct Examination.

My name is William J. Springer. I live in Chicago. I am a member of the Board of Trade. I have been engaged in the grain business of 32 years. I have been a member of the Chicago Board of Trade about 28 years. I am the only member of my firm. In 1930 and 1931 I was actively engaged in the grain business here in Chicago. (Tr. 370) I do my own work

in the pit. I am very well acquainted with Mr. Arthur W. Cutten, the respondent here. I have known him a good many years. In 1931 Mr. Cutten traded through me as a broker. I kept a record of transactions I had for him in 1931. I have the records here in court that I kept of those transactions. This book that the reporter has marked Complainant's Exhibit 95 I call the street ledger. Those trades are entered from the trading cards. This Exhibit 95 is a record of the transactions I had for customers, giving the names of the customers, the acounts and the amount of tax, the
174 broker, the tax, the amount and price. This record, this street ledger, was made by me from the trading cards and kept in the regular course of my business. This book is the book of original entry of the transaction.

In 1931 Mr. Cutten had two or three accounts with me. (Tr. 371 and 372) One was Mrs. Cutten's account and one was Mr. Cutten's. 20 was Mrs. Cutten's and 30 was Mr. Cutten's.

Mr. Tierney: Will you look at Exhibit No. 97 and tell me if that bears your signature?

A. It does.

Q. That was signed by you at the request of one of the auditors of the Grain Futures Administration?

A. Right (Tr. 373)

Q. This Exhibit 97 was given by you to identify the accounts carried on your books?

A. Right.

Mr. Tierney: At this time complainant offers the street ledger identified by Mr. Springer, being EXHIBIT 95.

Exhibit 96 is one of my records. It is kept by me in the regular course of business. It is a financial ledger showing profits and losses.

Mr. Tierney: At this time complainant offers EXHIBIT 96 identified by the witness.

The Referee: Is there any objection to Complainant's exhibits 95 and 96?

Mr. Taylor: No.

The Referee: They will be received. (Tr. 374)

Mr. Tierney: At this time the Government offers and reads in evidence that part of EXHIBIT No. 97.

175 The Referee: Do I understand you are offering Complainant's Exhibit 97?

Mr. Tierney: Yes, and there is no objection.

The Referee: Complainant's Exhibit 97 will be received.

Mr. Tierney: Q. Mr. Springer, to whom did you look for margins of accounts 20 & 30?

A. Mr. Cutten.

Q. That is Arthur W. Cutten?

A. Yes.

I also had an account, 150, on my books. I looked to Mr. Cutten for margins in that account. (Tr. 375 and 376)

Q. Who gave you the orders for the accounts?

A. Mr. Arthur Cutten.

Q. To whom did you render P & S statements?

A. Mr. Cutten's office.

Referring to page 190, in Exhibit 95, I note on the 5th of November, 1931, a transaction for Account No. 30. (Tr. 377)

Q. Under the figure number "30" directly opposite the record of the transaction where the price is registered at 70¾, a vertical line drawn—

A. No. That is 30 account and that is number 20 account.

Q. Let us get this straight. Let us get over here so that we can get it in the record. On page 190 you have the figures, in the column to the extreme left, beginning at the top of the page, "11/5"?

A. Yes, right.

Q. Meaning November 5th?

A. Yes.

Q. And then immediately below that a few lines you have "11/5" written a second time?

176 A. Yes.

Q. Meaning November 5?

A. Right.

Q. Immediately below that you have "11/5", written the third time?

A. Right.

Q. Now, following that line upon which the figures "11/5" meaning November 5, is written, you find a transaction for account Number 30?

A. Correct.

Q. You find also, under "30" that you have just referred to, a vertical line, do you not?

A. Up here, and then we put "30" in again. That starts here.

Q. You find a vertical line—

A. Up to this account here.

Q. Let me ask you a question and you can answer. Now,

I want to get it into the record. That is eleven lines, isn't it?

A. (No answer).

Q. Immediately below the number "30" that I have just referred to, you find a vertical line in ink drawn through eleven spaces?

A. Here is where this is—

Q. Do you or do you not?

A. No. That—

Q. I will give you an opportunity. You say No, and that is all we want. Do you want to say Mr. Springer, that there is not a complete line?

A. If it is it is an error but I don't believe it is.

Q. Take it over by the light there and see if you can see it.

A. If it is, it really doesn't mean anything.

177 Q. Do you see it now?

A. Yes, I do; it really doesn't mean anything.

Q. That vertical line that you recognize is not as plain as the line under the second "30" that appears in that same column, under the figure "20"?

A. I may have put that account down, you know what I mean, down wrong,—you know what I mean, put the numbers down wrong, and change the figures, the same as I could have put it wrong here, and then rewrite it. It wasn't done for any purpose.

Q. You mean to say there was a change made?

A. The change was made probably a minute later. after the account was written in there.

Q. I see, but you see that a change was made?

A. Yes.

Q. But you note under the number "30" opposite the figures "70¾c" there appears a figure number "20"?

A. Yes.

Q. Now, do you know when that "20" was put there?

A. Probably, I suppose, at the same time.

Q. At the time the correction was made?

A. At the time the correction was made, which might have been the same afternoon.

Q. Do you have any independent recollection whether it was the same afternoon or not?

A. I do not. I imagine it was.

Q. How do you account for the change, Mr. Springer, in

that, in making the correction? Did you talk to Mr. Cutten about that?

A. No, I never had a conversation with Mr. Cutten.

Q. Never did talk to him?

A. Never.

178 Q. You mean you never—

A. Whatever that error was, in putting down the wrong figure and then changing it, the other figure was my personal error.

Q. I see. On page 190 of your street book were there any purchases and sales for the Cutten accounts on that date; yes or no?

A. On the 11/5?

Q. Yes.

A. Yes.

Q. Were they purchases or sales?

A. Purchases.

Q. How much?

A. This was a sale, too.

Q. What were the purchases?

A. There was 400 May corn bought for number 30 account.

Q. How much wheat?

A. 175 May wheat for number 30 account. 25 May wheat for number 20 account.

Q. In other words, there was 200 bought for the Cutten accounts of May wheat; 200,000 bushels? (Tr. 378, 379, 380 and 381.)

A. Yes, 175 for one and 25 for another.

Q. For the two accounts, on November 5, as shown by your street book, there was 200,000 May Wheat, is that correct?

A. For the two different accounts.

Q. For the two different accounts?

A. Yes. (Tr. 382)

Mr. Tierney; Q. What reason did you have for making the correction?

A. I suppose there are many errors that occur, where you take your trades and throw them in there from the

179 trading card, where you make a correction. You will find that happens with every house.

Q. What reason can you now assign, Mr. Springer, for making the correction on November 5th with respect to the 200,000 May wheat originally entered for Account No. 30?

A. Well, probably the trading card was written incorrectly or they copied it wrong from the trading card.

Q. Do you now have any knowledge as to why that correction was made?

A. No. I do not. I can say frankly it was not done for the reporting sake.

Q. I see; and you do not deny the fact that Account No. 30 did have 300,000 in it at that time, do you?

A. I would not—I do not know.

Cross-Examination.

That is in my handwriting on Exhibit 97. That is an error. (Tr. 386) And this is my signature appearing on this document.

Q. Now, at the time that you made up that statement in evidence as Complainant's Exhibit No. 97, it was mailed by you to the Grain Futures Administration?

A. No, I don't think it was mailed. They asked me to sign it there.

The Referee: A little louder. I don't hear you.

A. I think I was asked to sign that in the Grain Futures Office.

Mr. Taylor: Q. Did you make a copy of this for your own records?

A. No, I don't think so. I don't remember.

Q. I hand you a copy of a document and ask you if that in any way refreshes your recollection? (Tr. 387)

Mr. Tierney: Let us have it marked. It is identified, Mr. Taylor?

180 Mr. Taylor: No.

Mr. Magner: That will be Respondent's Exhibit B.

Mr. Taylor: Mark this Respondent's Exhibit B for identification.

Mr. Taylor: Q. I hand you Respondent's Exhibit B for identification and ask you if that was made up at the same time that you signed and made up Complainant's Exhibit 97, which I hold in my hand.

Mr. Tierney: That is objected to as wholly incompetent, irrelevant and immaterial.

The Referee: Objection overruled.

(Complainant excepts)

Mr. Taylor: Q. What is the answer, Mr. Springer?

A. I think it was made at the same time.

Q. And this Respondent's Exhibit B was made up for the purpose of retaining a copy in your files, was it not?

Mr. Tierney: The same objection.

The Referee: Objection overruled.

(Complainant excepts)

The Witness: Yes.

Mr. Taylor: Q. And has Respondent's Exhibit B been retained by you in your custody and in your files since the date of March 13, 1934, which it bears? (Tr. 388)

A. I think it has.

Mr. Tierney: The same objection.

The Referee: Objection overruled.

(Complainant excepts)

Mr. Taylor: I offer in evidence this letter as RESPONDENT'S EXHIBIT B.

Mr. Tierney: For the purpose of making an objection to this offer, may I ask the witness at this time a question or two?

Mr. Taylor: Certainly.

Mr. Tierney: Q. Where did you sign Respondent's Exhibit B?

A. This one here?

181 Q. Yes.

A. I don't remember.

Q. You don't remember?

A. No.

Q. It is apparent that Exhibit B, the writing is not made by a carbon, is it?

A. No, not a carbon.

Q. And you do not claim that Exhibit B is a carbon copy of Exhibit 97?

A. No.

Q. You recall signing Exhibit 97 in the—

A. I do not, I don't remember. They seem to be dated the same date, don't they? I cannot figure it out, why one should be different than the other. (Tr. 389)

Q. Do you recall where you signed 97?

A. One was signed in the Grain Futures Department.

Q. That is one you signed your name to and left there, is that right?

A. Well, I left the "S" off of there. That is where the trouble is.

Mr. Tierney: We object to Exhibit B for the reason that it now appears that it is not a carbon copy of the letter. It

bears no signature and no proper foundation has been laid for its introduction.

The Referee: Objection overruled. It will be received.

(Complainant excepts) (Tr. 390)

When I signed that, there is no reason why they didn't say, whoever took that from me, why they didn't ask me if that was correct, because it is absolutely incorrect here. Why should I have a 30 and 20 account for the same party?
182 Now, I left off the S there, that is my only explanation.

But whoever took that in the Department, should have said that cannot be correct and I would have corrected it right at the moment. (Tr. 391)

When they asked me to sign—you know they sign these different accounts. Any one in their department would know that I wouldn't have two accounts under one person, so I must have made an error there. We are busy as can be and you rush up there to the Department and I wouldn't put down two names to have the number 30 and 20 as one party. (Tr. 392)

Exhibit 95, under the entry of November 5, appearing in the middle of the page, indicates there was 175 May wheat bought for number 30 account and 25 May wheat for number 20 account. (Tr. 393)

Q. And isn't it a fact, Mr. Springer, that this line, to which your attention has been directed, coming from number 30, the middle of the page, down to and through the line appearing under numeral number 30, might not be a correction but simply might have been a line—

A. Just a line drawn through there and then corrected, the same as it is here, an error in here. The corrections are made.

A correction of this sort is not an unusual thing in my books; it happens on anybody's books. I never had any talks with Mr. Cutten about these two accounts about which I testified. When he gave me an order to buy or sell a given commodity, he would always at the time designate in which accounts he wanted it. (Tr. 394) Considering the business I have handled for him, the business that was carried in 1930 and 1931 was not in very substantial or large amounts. I was given the account when I filled the order, and I would fill it in accord with those instructions. I never had any arrangements, nor any agreements with, nor instructions from, Mr. Cutten that either of these accounts should not be permitted to exceed 500,000 bushels in amount, and I never gave any one in my organization, any of my clerks, any such

instruction. The representatives of the Grain Futures
183 Administration had their representatives examine my books, (Tr. 395) not very often. Occasionally. When they did come to my office I was very courteous to them. I knew nothing about how Mr. Cutten was reporting his trades. Any time that either of these accounts exceeded 500,000 bushels, in any one option, I reported it. (Tr. 396)

Redirect Examination.

I have been a member of the Board of Trade some twenty-five or thirty years.

Q. And you say it is an unusual thing for one firm to have two accounts for one person?

A. Yes, sir. You know what I mean. According to those figures there I would be—

Q. You mean it is unusual in so far as this case is concerned?

A. No, I don't see any object of having—I can't see the object of it, at least in my business.

Q. Would you be surprised to learn that the Jackson Company had five accounts for Mr. Cutten under different numbers?

A. Well, what I mean, I think the boys over there knew they were different accounts, in the Grain Futures Administration.

Q. Would you be surprised to know that Jackson Brothers had five accounts for Arthur W. Cutten, under different names? Is that something unusual?

A. (No answer)

Q. Would you be surprised to know that Clement, Curtis had five accounts for Mr. Cutten? Is that something unusual?

A. No.

Q. You don't mean that it is unusual to have two accounts in that way. What do you mean when you "say" it is unusual.

184 A. Well, I think they should have known there that I wouldn't have number 30 account, Mr. Cutten, and number 20 account, Mr. Cutten. I have reported these before, I am sure. (Tr. 397-398)

JOHN R. MAUFF, called by Complainant, duly sworn, testified as follows:

My name is John R. Mauff. I live in Chicago. I have been connected with the grain trade in Chicago all my life. I am acquainted with Arthur W. Cutten and have been quite intimately, for the past ten to fifteen years. I was connected with the grain firm of Charles D. Robbins & Company for six months in 1930. I went with them in April, and they went out of business on the 30th of October of the same year. During the time that I was connected with C. D. Robbins & Company, I had business for Arthur W. Cutten with that firm, It was all grain transactions. Everything he did through that firm was handled through me. I note the initials "R. J. C." at the top of the first page of Exhibit No. 3 and also the writing "Hold for J. R. Mauff". I am the J. R. Mauff referred to there. The trades appearing on the first sheet of Exhibit No. 3 were made for Arthur W. Cutten. In the trades made, appearing on the last page of Exhibit No. 3 bearing the initials "H. C.", Mr. Cutten gave the orders.

Q. Who was the owner of those accounts?

A. I knew no one except Mr. Cutten in the transactions.

Q. All your dealings were with Arthur W. Cutten?

A. All by personal contact. (Tr. 399-400)

Q. I note at the top of Exhibit No. 3 "Member's rate of commission." Were those accounts given member's rate of commission?

A. They were given the member's rate of commission in the making up of the purchase and sale.

185 *Cross-Examination.*

My business connections prior to being associated with C. D. Robbins & Company with with E. W. Clucas & Company; a New York firm that opened offices in Chicago the summer of 1929, and when the trouble came along Mr. Clucas came to Chicago and asked me to liquidate the Chicago office. They had decided they would close all of their branch offices. They were only in Chicago here six months. Prior to my association with Clucas, I was associated with E. Lowitz & Company, about a year and a half. (Tr. 401) Prior to that I was managing director of the paper board industry of the United States.

E. Lowitz & Company had an account with Mr. Cutten when I went with them, and he had in that account, I think, almost entirely stock trading. This business that I had on the books of C. D. Robbins & Company for Mr. Cutten was my personal business, absolutely. Mr. Cutten placed this business with C. D. Robbins & Company because of personal friendship of many years standing between him and me. I just had the two accounts on the books of C. D. Robbins & Company; R. J. C. and H. C. (Tr. 402) Well, some years ago, I met Ralph, Mr. Cutten's brother, from Guelph, Ontario, here in a social way, and R. J. C. are his initials. I also met Harry, another brother, and one might surmise that H. C. was Harry's account, but there was no discussion on that subject. There was no discussion between me and Mr. Cutten. If he told me to put down WXY or PDQ or any other number or any name, I would put it down, because that was the custom of the street. As far as I know, both of those accounts were Mr. Cutten's. (Tr. 403)

Having spent my business carreer in the grain business, I have made an intensive study and survey and analysis of that business, as I have never studied anything else. I have
186 studied this whole system in all its phases. I have written articles for magazines. I lectured before the Northwestern University Commerce Club. I met my friend Judge Gough. We had a debate before the American Society of Cooperation at the Northwestern University. I have written for Lighton's Magazine of SanFrancisco, and innumerable others, including local papers. (Tr. 404) I understand Grain Futures Law, enacted in 1922, and the rules and regulations passed subsequent to that time. (Tr. 427)

Some of the articles written by me have appeared in Lighton's Magazine of San Francisco, and Russell's Review, some out of town papers, the Journal of Commerce here. I have written for the Journal of Commerce of Chicago a featured article, "The Vindicated Speculator" in December, 1932.

Respondent's Exhibit C contains the article, "The Vindicated Speculator." That article, appearing under the words "The Vindicated Speculator," over my name, John R. Mauff, was prepared and written by me. I prepared a pamphlet entitled, "A Grain Cataclysm." Russell's Review's editor, Mr. Luck, wrote me from New York and asked me to give them an article for his publication on grain in general. In response to that I wrote that article, which was published in Russell's

Review, and it attracted some attention, so much so that there was a request made for a lot of reprints. That is a reprint of it.

Respondent's Exhibit D is the article about which I have just testified, "A Grain Cataclysm." It is the reprint of Russell's Review of 1930. This article was prepared and written by me, exclusively. Research work was done, a good deal of research, which was necessary for a thing like this. (Tr. 427, 428 and 429) The statements and views therein are my views of grain trading as derived from my study and survey of this business and contacts with other authori-
187 ties. I was formerly Vice-President of the Chicago Board of Trade. I held every office in the Board of Trade, even acting president for a while, and then along about—yes, just about the time the Grain Futures Act was enacted into a law, they created a new office for me known as Executive Vice-President.

During the time I was with Charles D. Robbins & Company, I prepared circulars which were circularized for the offices and the customers of Charles D. Robbins & Company, Respondent's Exhibit E is exclusively all my work. I might explain that Charles D. Robbins & Company had been a stock exchange house, and when I went there it was my desire to build up a following in trading in grain, so this is in a way educational. These pamphlets were printed in large numbers. Robbins & Company had offices in Buffalo, Chicago, Watertown, Syracuse, Auburn and Wall Street and these were distributed to not only the offices but to all of the customers of all of the offices. This was prepared by me as the result of my study of grain trading.

Mr. Taylor: I offer these in evidence and ask that they be admitted.

Mr. Tierney: Which do you offer? Do you offer them all?

Mr. Taylor: Yes. And I do that, Mr. Referee, with this assurance to Mr. Tierney and to the Referee, that there is a great deal of data and considerable compilation of information there that we will not want to use, but to save time rather than take it out now and present each statement to the witness and ask the witness if that would be his testimony if the question were propounded to him, I thought we would save time by putting them in and permitting us to take such extracts from them as we may want to use, and of course counsel for the Government will be privileged to do the same. (Tr. 430, 430A, and 431)

188 Mr. Tierney: I want to make an objection here when I look at these a minute. Complainant objects to Exhibit C, for each of the following reasons:

First, the Exhibit is not properly a part of proper cross examination. The witness was called by the Complainant for the sole purpose to show, and he testified only, to the fact that he was a customer's man for C. D. Robbins & Company, and that Arthur Cutten was his customer and that the accounts in evidence were those of Arthur W. Cutten. We did not go into the question as to his opinion on any subject or any of the writings that he may have had.

The Referee: Objection overruled. RESPONDENT'S EXHIBIT C will be received.

(Complainant excepts)

(Whereupon, Exhibit C, Respondent, was received in evidence)

Mr. Tierney: We make the same objection as to Exhibit D. There are three articles here. I am objecting first to Exhibit C. That is the first objection. Next, is as to Exhibit D.

Mr. Taylor: C, D, and E are offered.

Mr. Tierney: And add this also to the objection to Exhibit C, that they are wholly irrelevant and immaterial to any issue in this case. (Tr. 432) I make the same objection to Exhibit D. And we also object to Exhibit E for the reason that it is not proper cross examination. It does not bear upon any subject that this witness was interrogated on direct, and it does not tend to disprove the fact that Mr. Cutten failed to make reports or made false reports in the years 1930 and 1931.

Nothing appears on Exhibit E as to when it may have appeared or been published. And it appears that Exhibit C was published in December, 1932, long after the acts complained of here occurred.

The Referee: Objection overruled. RESPONDENT'S EXHIBITS D and E will be received.

(Complainant excepts)

189 *Redirect Examination.*

I did not see Ralph J. Cutten in 1930 and 1931 at any time. I did not see Hary Cutten in 1930 and 1931. I had not seen him for several years prior to that.

Recross Examination.

These accounts belonged to no other than Mr. Cutten, as far as I know, I assumed they belonged to Mr. Cutten because all of my dealings were with Mr. Cutten. He put up the margin and he guaranteed them. And he was the only one from whom I received any orders or instructions; I knew no one else.

Redirect Examination.

I knew those accounts were given member rates of commission. And I knew that R. J. Cutten was not a member of the Board of Trade in Chicago. (Tr. 434 and 435) And I knew that Harry Cutten was not a member of the Board. (Tr. 436)

Mr. Tierney: The Complainant at this time offers Exhibit 98, a certified copy of the rules and regulations and amendments thereto of the Secretary of Agriculture, under the Grain Futures Act of September 21, 1922, duly certified in proper form.

Mr. Taylor: Well, I have no objection to their admission for what they are worth and what they purport to be. I do object in that they fail to show that they are all of the rules and regulations or fail to show for what period of time they cover. But we can go into that on examination of Mr. Fitz.

The Referee: Well, COMPLAINANT'S EXHIBIT 98 will be received. (Tr. 406 and 407)

190 L. A. FITZ, called by complainant, duly sworn, testified as follows:

My name is L. A. Fitz. I live in Chicago. My official title is Grain Exchange Supervisor of the Grain Futures Administration, in charge of the Chicago Office. I am the representative of the Secretary of Agriculture in Chicago, with respect to the Grain Exchange. I have meen continuously employed in that capacity since August 1, 1925.

My office receives and keeps records and reports from members of the Board of Trade, such as reports of non-clearing members and clearing members, as to their positions in the market and trades in the market. In 1926 I, (Tr. 408) as Grain Exchange Supervisor, called upon Mr. Cutten to make

certain reports to the Grain Futures Administration. (Tr. 408-409)

Mr. Taylor: Now, I object to this line of inquiry, your Honor, in that we are confronted with a complaint charging Mr. Cutten with certain offenses having been committed in 1930 and 1931, and whatever the situation may have been, in regard to Mr. Cutten's activities, in 1925 or 1926, have no bearing upon this inquiry whatsoever. I make that objection for the record.

Mr. Tierney: This is leading right on up to 1930 and 1931. It is preliminary to the 1930 and 1931.

Referee: You are not attempting to base any—

Mr. Tierney: No charge against him for 1926. He is charged for 1930 and 1931, and this is a preliminary step, bringing it up to that period of 1930 and 1931, that's all.

Referee: All right. Objection overruled.

(Respondent excepts) (Tr. 409)

191 On February 6, 1926, I forwarded a letter to Mr. Arthur W. Cutten in Chicago requesting (Tr. 409) him to make reports to the Grain Futures Administration. A letter of the character of "Exhibit 99", exactly like that, was sent to Mr. Cutten under date of February 6, 1926. On that date I sent Mr. Cutten forms upon which to make reports, and instructions as to how to make them.

At that time I forwarded a set of instructions to Mr. Cutten as to the manner in which reports were to be made, such as "Exhibit 100". I enclosed blank forms, number 113, and forwarded them to him at that time, upon which reports were to be made. A form such as "Exhibit 101" was sent to him at that time. There was a dummy form enclosed at that time, as an example, and to how the reports were to be made out. "Exhibit 102" is a dummy form such as that which was forwarded to him at that time.

Mr. Tierney: Complainant offers in evidence "EXHIBITS 99, 100, 101, and 102" identified by the witness.

Mr. Taylor: Same objection to this entire line of inquiry.

Referee: Objection overruled. Complainant's "EXHIBITS 99 to 102" inclusive, may be received.

(Respondent excepts) (Tr. 411)

Up to February 11, 1926, I had received no response from Mr. Cutten to my letter of February 6, 1926. I sent him a letter on that date. "Exhibit No. 103" is a copy of the letter sent to him at that time. It is a carbon copy. (Tr. 412)

Mr. Tierney: At this time complainant offers in evidence "EXHIBIT 103", as follows:

"February 11, 1926.

"Mr. A. W. Cutten,
1022—208 South LaSalle Street,
Chicago.

Dear Sir:

192 Under date of February 6th I sent to you call for report on your individual grain futures transactions on the Chicago Board of Trade in accordance with the rules and regulations of the Grain Futures Administration. This call should have reached your office by Monday, February 8th. I have not as yet received your reports. Will you kindly see that the report reaches this office not later than Monday, February 15th, giving report of such grain futures transactions as at the close of business February 8th, and also kindly render future reports in accordance with the requirements of the regulations.

Very truly yours."

This letter was mailed to Mr. Cutten. Following the mailing of this letter to Mr. Cutten I received reports from him. (Tr. 413) Following my letter to Mr. Cutten of February 11th, I received a report from him as of February 13, 1926. That is "Exhibit 104."

During the year 1926 Mr. Cutten made many reports to my office as to his position in the market. This group of EXHIBITS numbered consecutively from 104 to 247 were received from Mr. Cutten during the year 1926. (Tr. 414) These exhibits 104 to 247, inclusive, are a part of the permanent records of our office. Mr. Cutten reported to my office under Code Number—zero one (01). On "Exhibit 104", the figures immediately following the name "Uhlmann Grain Company" in the column under "Name of Chicago firm", the figures "200 long," indicated his net position with the Uhlmann Grain Company in May wheat on that date. That is 200,000 bushels. These reports were all made out with the three ciphers omitted.

The figures "400" after the name "J. Brothers", and the figures "400" after the name "Faroll Brothers", (Tr. 193 415) indicate that his net position with J. Brothers was 400 long May corn, and with Faroll Brothers 400 long May corn. This report indicates that he did not have 500,000

bushels with either firm in May corn, and yet he reported it on the first report that he made on February 13, 1926.

Over in this other column, to the extreme right, in the column "aggregate of all long and all short open accounts", under the first column, indicates the total net and total short position. That is, the first column is the total long and the second column is the total short. And that is true with all of these exhibits I have identified, 14 to 247.

On "Exhibit 113" with respect to May wheat, I note, after the figure "10" under the "bought" column, some writing—Jackson, (Tr. 416) and after the name "Jackson" I note the figure "10". That indicates his net position with Jackson, in May wheat, was 10,000 bushels long. And under the column for "aggregate of all long and all short open accounts", he was long at that time 1,255,000 May wheat. (Tr. 417)

Under date of March 13—referring to "Exhibit 115"—he reported 10,000 May wheat with Jackson Brothers, and he was long at that time 1,665,000 May wheat.

Mr. Tierney: At this time we offer in evidence "EXHIBITS 104 to 247", both inclusive, identified by the witness.

Mr. Taylor: No objection.

Referee: "COMPLAINANT'S EXHIBITS 104 to 247" inclusive, will be received.

According to "Exhibit 142", Mr. Cutten, on May 24, 1926, was short July wheat 6,600,000. On May 27, according to "Exhibit 143" he was short July wheat 8,800,000. On May 28 he was short July wheat 9,900,000. On May 29 he was short July Wheat 10,200,000. On June 1 he was 10,800,-
194 000 short. On June 3 he was short (Tr. 418) 11,300,000. On June 4 he was short 9,800,000.

Usually in the months of August and September, the farmer's grain moves to the markets. That is the normal time for wheat to move to market.

Q. How much December wheat was Mr. Cutten short on September 1, 1926?

A. The report shows he was short December wheat—10,635,000.

Q. How much was he short on September 12, 1926?

A. 11,045,000. (Tr. 421)

He was short total wheat on September 4, 1926, according to "Exhibit 208", 11,145,000. He was short, according to "Exhibit 210", total wheat, on September 8, 1926, 11,445,000.

Mr. Cutten made reports to my office during part of the year 1927. (Tr. 422) Exhibits marked 248 to 269 are reports re-

ceived from Mr. Cutten in the year 1927. During 1927 he was reporting, according to these reports, less than 500,000 bushels with one firm. I see several instances here. From January 3rd, 1927 to February 25, 1927, as shown by "Exhibits 248 to 269", Mr. Cutten was not long wheat on any one day. (Tr. 423)

Mr. Tierney: I do not know whether we have offered this group or not, Exhibits 248 to 269, both inclusive. If not, at this time I offer them.

Mr. Taylor: What year is that? 1927?

Mr. Tierney: January 3, 1927 to February 25, 1927.

Mr. Taylor: All right. Are you putting in the reports made after the suspension order was concluded?

Mr. Tierney: They have not been offered as yet.

Mr. Taylor: I see. You have got those. All right.

195 The Referee: Is there objection to complainant's Exhibits 248 to 269, inclusive?

Mr. Taylor: No objection.

The Referee: They will be received. (Tr. 437)

The reporting requirements were temporarily suspended in 1927. Mr. Cutten was advised of that. "Exhibit 270" is a copy of a letter sent to Mr. Cutten advising him that the reporting requirements had been temporarily suspended.

Mr. Tierney: We offer 270, COMPLAINANT'S EXHIBIT. (Tr. 424)

Mr. Taylor: No objection.

The Referee: It will be received.

Following February 1927, reporting requirements were reinstated after their temporary suspension. Mr. Cutten was advised of the reinstatement of the reporting requirements. "Exhibit No. 271" is a carbon copy of the letter sent to him, under date of November 4, 1927.

Mr. Tierney: Complainait offers "EXHIBIT 271."

Mr. Taylor: No objection.

The Referee: It will be received. (Tr. 425)

Following my letter to Mr. Cutten of November 4, 1927, "Exhibit 271", he made reports to us. (Tr. 437) The first report received by me following my letter to him of November 4, 1927, was on November 7, 1927, as of November 4th. And that is all shown on "Exhibit 272". On "Complainant's Exhibit 281", by the figures "May corn, J. Brothers, 135", he reported his net position with J. Brothers as being 135,000 long May corn. These reports, Exhibits 272 to 357, both in-

clusive, show the total open commitments, short and long, as of the date.

Mr. Tierney: At this time complainant offers in evi-
196 dence "EXHIBITS 272 to 357" both inclusive, identified by the witness Fitz.

Mr. Taylor: No objection.

Referee: They will be received.

My office received no reports from Mr. Cutten as to his open commitments or (Tr. 438) trades during the year 1930. In 1931 I recall the occasion of taking up with him the subject of reporting. We received a report from one of the commission firms showing his position on the 2nd, 3rd, 4th and 5th of January of that year. That was from the Clement Curtis Company. Following my receipt of the report from the Clement Curtis Company, reporting Mr. Cutten in the market, I wrote him a letter. "Exhibit 358" is a carbon copy of the letter sent to Mr. Cutten on January 6, 1931.

Mr. Tierney: Complainant offers in evidence "EXHIBIT 358".

Mr. Taylor: No objection.

Referee: It will be received. (Tr. 439)

I enclosed a set of blanks for Mr. Cutten to make reports on, and also sent him a set of instructions and a dummy report. (Tr. 440) Following my letter of January 6, 1931, "Complainant's Exhibit 358", I received a report from Mr. Cutten in response to that letter. "Exhibit 359" is the one I received. That was a report as of January 5, 1931. In that report he reported his position as being short July wheat 600,000; long May oats 1,005,000; long May rye 300,000. There was no corn reported.

"Exhibit 360" is a report I received from Mr. Cutten as of January 6, 1931. "Exhibit 361" is a report received from Mr. Cutten.

On the report of January 7, 1931, July wheat only was reported. (Tr. 443)

Following receipt of "Exhibit 361" I wrote Mr. Cutten
197 another letter. "Exhibit 361-A" is a carbon copy of a letter written under date of January 15, 1931, to Mr. Cutten.

Mr. Tierney: At this time we offer "COMPLAINANT'S EXHIBIT 361-A" as follows:

"In response to our call for report on your Chicago grain futures transactions, we received, under date of January 7, a report showing transaction and open interest in July wheat.

"Apparently you have misunderstood the meaning of this call for report and have simply reported on the one grain and future in which you made a transaction on January 7. This call was for complete report upon your Chicago grain futures transactions and at that time our records show that you had open interests in other grain than the July wheat.

"Will you kindly send a corrected report for January 7, and keep in mind the requirements regarding additional reports." (Tr. 444)

Mr. Taylor: No objection.

Referee: All right, it will be received.

Following the sending of "Exhibit 361-A", I received a corrected report from Mr. Cutten as of January 7th. And in that report he reported 300,000 May rye with Uhlmann Grain Company, and he reported also July wheat short 320,000.

Mr. Tierney: At this time we offer in evidence "EXHIBITS 359 to 376", both inclusive, identified by the witness.

Referee: Is there objection?

Mr. Taylor: No objection.

Referee: They will be received.

On "Exhibit 361" the figures "320" (Tr. 445) report his net position in July wheat with Clement Curtis as being 198 320,000 short. On "Exhibit 370" on the first line, written in pencil, "May corn, 255 bought, Clement Curtis, 245". The figures "245" report his net position with Clement Curtis in May corn as 245,000 short. On "Exhibit 371", of date February 9, 1931, the words and figures, "May corn, 145, Clement Curtis, 100," report his position in May corn with Clement Curtis as being 100,000 short. The figures "260" with respect to Keech report his net position in May corn with Keech & Company as 260,000 short. The figures "150" with respect to Keech report his net position in July wheat with Keech & Company was 150,000 short.

On "Exhibit 374", of date March 18, 1931, he reported May oats, old contracts, Jackson Brothers, net position (Tr. 446) 440,000 long. On "Exhibit 376" his net position with Bartlett-Frazier in May wheat was 100,000 short.

We did not receive any reports from Mr. Cutten during the months of November and December 1931. I took the matter up with him in March, 1932, of (Tr. 447) giving us reports of his position for November and December, 1931. I took that up by letter. (Tr. 448) In response to my requests to him to report his open commitments and trades, I received this group of reports, "Exhibits 377 to 401" both inclusive, on March

23, 1932. They were reports covering transactions on the 30th of November, 1931, and during the month of December, 1931.

Mr. Tierney: We offer in evidence "EXHIBITS 377 to 401", reports made by Mr. Cutten for a period of November 30, 1931 to December 29, 1931.

Mr. Taylor: No objection.

Referee: They may be received.

I have made a study to ascertain when various firms with which Mr. Cutten traded, reported his open commitments
199 on their books to our administration. We did not receive a report (Tr. 449) from the Uhlmann Grain Company, showing the position of Arthur Cutten, accounts owned and controlled by him, of July wheat, as of the date of December 11, 1930. Such a report was not received with respect to the same future on December 12, 1930. No such report was received on December 13, 1930. In fact we received no reports from the Uhlmann Grain Company during the years 1930 and 1931, reporting the position of Mr. Cutten, with respect to July wheat, September wheat, December wheat, or May wheat.

I did not receive from F. B. Keech & Company a report as to the position of Mr. Cutten in September wheat as of June 13, 14, 16, and 17, 1930. We did not receive from F. B. Keech & Company such a report as to Mr. Cutten's position in December wheat, 1930, as of July 19, September 15, October 28, October 29, October 30, October 31, November 1st, November 3rd, 1930. (Tr. 450) No report was received from F. B. Keech & Company as to Mr. Cutten's position in May wheat, as of November 4, 5, 6, 7, 9, 10 and 12, 1931.

I received no reports from Bartlett-Frazier Company as to the position of Arthur W. Cutten in July wheat in 1930, as of February 14, 15, 17, 18, 19, 20, 21, 24, 25, April 3, 4, 5, 7, 8, 9, 10, 11, 12, 14, 15, 19, 21, 22 and 30, May 1, 2, 3, 5, 7, 8, 9, 10, and December 26, 27, 29, 30 and 31, in the year 1930. I received no reports from Bartlett-Frazier Company reporting Mr. Cutten's position in September, 1930 wheat futures, as of May 8, 9, 10, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 26, 27, 28, 29, 31, June 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 23 24, and 25. (Tr. 451) I received no reports from Bartlett-Frazier Company as to Mr. Cutten's position in December wheat as of August 6th, 7th, 8th and 9th, 1930.
200 I received no report from Bartlett-Frazier Company of the position of Arthur W. Cutten with them in September wheat, as of March 13, 14, 16, 17, 18, 19, 20, 21, 23, 24, 25,

26, 27, 28, 30 and 31, April 1, 2, 4, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16 and 17, 1931. (Tr. 452) I received no reports from Bartlett-Frazier & Company as to Mr. Cutten's position in December wheat futures as of July 27, 28, 29, 30, 31 and August 1, 1931.

I received no reports from Jackson Brothers Boesel & Company of Mr. Cutten's position in September wheat in accounts owned and controlled by him in September, 1930 wheat futures as of May 15, 16, 17, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 31, June 2, 3, 4, 5, 6, 7, 9, 10 and 11. And no such reports in December wheat futures as of the same year as of June 30, July 1, 2, 3, 7, 8, 9, 10, 11, 12, 14, 15, August 6, 7, 8, 9, 23, 25, 26, 27, 28, 29, September 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 22, 23, nor of July wheat futures of the same year, December 29, 30 and 31.

I received no reports from the same firm in the year 1931 with respect to the July 1931 wheat future (Tr. 453) of Mr. Cutten's position with that firm as of January 2, 3, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30 and 31.

The document I have in my hand is a record showing the dates upon which reports were rendered for the accounts of Mr. Cutten by the various commission houses. I received reports from these various commission houses as to Mr. Cutten's position in the market only on the days that are there. And the days that are not there, I did not receive any reports. (Tr. 454) This "Exhibit 402" is compiled from our records of reports received from Commission houses. And "Exhibit 402" shows a summary of the reports rendered by commission houses covering net positions of Arthur W. Cutten. It
201 shows the days on which we received reports. And only the days on which we did receive reports.

Mr. Tierney: Complainant offers in evidence "EXHIBIT 402", (Tr. 455) identified by the witness.

Mr. Taylor: No objection.

Referee: COMPLAINANT'S "EXHIBIT 402" will be received.

Cross-Examination.

I first associated with the Grain Futures Administration on August 1, 1925. Prior to 1925 I taught country school for four years. I took a college course and graduated from the Kansas State Agricultural College. I took up work with the Department of Agriculture in the office of cereal investiga-

tions and small grains in 1902. I worked with that office until October, 1906, and was transferred to what was then known as the Grain Standardization Office, which subsequently developed into the Grain Division of the Bureau of Agriculture Economics. I then resigned and accepted a position with the Kansas State Agricultural College and taught classes in grain marketing and grading. Also, in my department, which was known as the Milling Industry Department, we had classes in experimental milling, cereal chemistry, milling and baking tests. I resigned in July, 1922, to accept a position with the Fleischmann Laboratories, in charge of their bread and flour investigations, and I left that position to come here to Chicago to take up this work in August, 1925, and have been here since. (Tr. 457) I have charge of the Chicago office and the work consists primarily in the receiving of reports of the transactions upon the Chicago Board of Trade, Chicago Open Board of Trade, Milwaukee Grain and Stock Exchange, and the St. Louis Merchants Exchange; also to make a set of permanent records of price quotations and to check
202 the market gossip and to examine books and records where necessary to verify reports or to check matters that come up in connection with the transactions.

I have had very little correspondence with the Secretary of Agriculture at any time. I have written a few letters to the Secretary. We make reports and carry on most of our correspondence with the Chief of the Grain Futures Administration located in Washington. (Tr. 458) That is Dr. Duvel I have continued and continuous correspondence with that Department and that correspondence is with Dr. Duvel. We do not make monthly reports to the Department of the results of our operations in Chicago. Our reports, in the way of any formal report of the work of the Grain Futures Administration is an annual report. We may report some episode that may occur today and there may not be another type of report go in for several days. I should say there is a report of the general market condition, a summary, goes in at the close of each week; ordinraily on Saturday. I am willing to have the record show that I correspond with Washington, with the Department with which I am working, at least once a week on the average; perhaps more than that. (Tr. 459)

In 1925 when I came, Mr. Jardine was Secretary of Agriculture. Mr. Arthur M. Hyde succeeded him. And now the Secretary of Agriculture is Mr. Wallace.

Reports from commission houses were being made to the

office before and when I took charge. Reports by an individual, as in the regular course of procedure, began after the amendment to the original regulations were promulgated, about January 20, 1926, if I am correct in the date. We had no reports from individuals prior to about January 20, 1926. (Tr. 460)

203 It is my opinion, without consulting the record, that there were some reports made in 1929 by Mr. Cutten. I am not sure without consulting our office files. I have not consulted our files and records to ascertain as to whether or not any reports were made by Mr. Cutten in 1929. (Tr. 461) There was no special reason for making a search of his position in grain trades for 1927 except in its connection with the reporting of the accounts and the fact that there was a break in the reports. (Tr. 462) We knew that the reporting requirements had been suspended temporarily for a time and then reinstated. That does not account for not being interested in the reporting of Mr. Cutten in 1929. There is nothing unusual about this 1929 period in my mind, that has caused the Government, or caused me to omit it in these very detailed reports that have been submitted here. There isn't any reason for it at all. I am willing to state now that I have made no search for 1929. The records and the reports of 1929 would be kept in our regular files and regular place for them. If any reports were rendered they are there, I assume. (Tr. 463) We have information with reference to the reports that we received from brokers, from the grain firms, on Mr. Cutten's account in 1929. We have a transcript, or rather, we have a book record, running by months, of each and all of the special accounts that have been reported by brokers, and we also have original reports rendered by the brokers. (Tr. 464)

It is a fact we did receive reports from the brokers relating to Mr. Cutten's position. (Tr. 465) On Mr. Cutten's individual reports to our office he, under the rules and regulations, should show his total position in the market as controlled by

204 him, and if he had customers, just as a commission house or brokerage house would have customers, he should show those independently as customers controlling or owning part of the open interest. I had no means of knowing whether he had customers or not. As far as I was concerned, I depended on him to report the fact if he did have them. I knew Mr. Cutten was a large operator. (Tr. 466) I knew it from facts. If he had customers he was called upon to report them.

If he did not report them, I had a perfect right to assume that he did not have customers. One of my functions here as head of this department was to cooperate with the Board of Trade and to cooperate with the members of the Board of Trade and their customers to the end of working out as smooth an operation of the Grain Futures Administration as was possible. And a part of my duty was to exercise as much diplomacy and tact in the meeting with customers and in the meeting with members of the Board of Trade as I was capable of. I think I met Mr. Cutten personally only once that I (Tr. 467) recall, possibly twice. I don't think I ever talked to Mr. Cutten on the telephone, at least not that I know of. I have called Mr. Cutten's office numerous times. I assume that I talked to Mr. Finley in Mr. Cutten's office, although I did not ask his name at the time. I do not know that I did not talk to Mr. Cutten. It is my opinion that I did not. I have asked for Mr. Cutten when I 'phoned the office. It is my opinion that I did not talk to Mr. Cutten, but I could not swear to it. I have no personal knowledge of Mr. Finley, except that I have been informed that a gentleman by the name of Mr. Finley acted as Mr. Cutten's secretary for some time. (Tr. 468)

I have never had a letter signed by Mr. Cutten. I have never had a telegram from Mr. Cutten. I do not think Mr. Cutten has ever 'phoned me. I have no grievance against Mr. Cutten. I am simply interested in the facts, Mr. Taylor.
205 I have no venom about this thing. If Mr. Cutten has an explanation of the complaints which our department has registered against (Tr. 469) him which would be satisfactory to me and in turn to my chief, I would want that explanation made. I certainly think we would be glad to entertain any explanation that they have. It is for the Commission to consider now.

I have never had any contact with Mr. Cutten except by letters, and except calling his office by telephone. After I found out what apparently had happened, it appeared to me that there was a serious infraction of the law, and the rules and regulations promulgated thereunder, and it was my duty to report the facts to Washington, rather than to take it up with any individual. I have no power to excuse for any infraction of the law.

We began to find out that there were additional accounts carried under various code designations that apparently were under his control along in November (Tr. 470) or December, 1931, but that was just an inkling of the fact that everything

had not been properly reported, and we then issued a call for some back reports and began some checking up, and owing to the confusion in which we found a lot of these records, the many errors, cross checking, tracing of the things through the financial records, and the re-identification of code accounts, it was not finally completed until about March, 1934. In the fall of 1931 reports were being made to us by brokers, by firms, grain firms, but the information that came to us was not completed until 1934, in our check-up on the final situation, in running down all of these accounts, rechecking and getting dates straightened out, contradictions run down. I believe that our letter to Mr. Cutten requesting him to make back reports, beginning with November 30th, served notice on him that we found that he had not been complying with the require-
206 ments. (Tr. 471) I knew at that time that in my opinion he had not been complying with the requirements. I felt covering this back period, we were going into that he had not been complying.

Q. Now, is it now usual and customary, when a situation of that sort develops, Mr. Fitz, that you report it to the Business Conduct Committee of the Board of Trade?

Mr. Tierney: That is objected to for the reason that it is calling for his legal conclusion. There is nothing in the Act or reguluations that requires any report to the Business Conduct Committee.

Referee: Objection overruled.

(Complainant excepts.)

Witness: Ordinarily, it is our practice to report current things to the Business Conduct Committee, if it is a continuing proposition and deals with certain features, but this apparently was something that had happened in the past. (Tr. 472)

It was happening in 1931 when I discovered it. It had happened in the past. And was still an existing condition. Our usual practice in a case of that kind is that we call upon the individual to remedy the situation. And if he has done so or does so, the matter is not brought to the attention of the Board officials at the time. If he refuses to comply, then the matter is presented to them usually for their action. I am taking the position that Mr. Cutten did not comply. Never have I made a request of them and in turn had from them a refusal to comply. (Tr. 473)

Q. They complied in a manner that you do not feel, or they

complied with actions and with reports which you feel do not constitute a compliance with the rules and regulations?

Mr. Tierney: That is objected to as calling for his legal conclusion and opinion. He is not competent to answer.

Referee: Objection overruled.

(Complainant excepts)

207 Witness: Well, I am not a lawyer, but in my humble judgment, a number of the reports which were rendered do not comply. (Tr. 474)

I report to and work under Dr. J. W. T. Duvel, Chief of the Grain Futures Administration. I have not read the report of the hearing before the Committee on Agriculture, in the House of Representatives, of the 73rd Congress, Second Session, on House Report 8829. I have read some portions of it. I have not read the testimony of Dr. Duvel at that hearing. I know what this hearing related to, the question of a Bill that was being considered by the Committee, an amendment to the present Grain Futures Administration Act—the Grain Futures Act.

Q. If I were to tell you that at that hearing Mr. Duvel testified that: "The regulations provide that they should report on 500,000 bushels or more. These orders were so scattered that most of the accounts did not come within the reporting requirements. We find many accounts of 495,000 bushels. Then we follow through on account of this character, it is not uncommon to find them coupled with accounts in the name of the wife, some relative, or even an imaginary individual."

And after that statement by Dr. Duvel, Mr. Glover interrogated him by asking him this question: "Now, what have you done to prevent the effect that is had on the market? What has been done by the Department with those who have been guilty of short selling?"

Mr. Duvel: "Of course they are not violating the Act." (Tr. 475 & 476)

Mr. Glover: "They have not violated the Act?"

Mr. Duvel: "No, short selling is not a violation of the Act."

Mr. Glover: "But you have some regulations and rules 208 which they have violated?"

Mr. Duvel: "None that cover the matter of short selling. Neither do we have regulations that prevent the splitting of accounts to keep under the reporting requirements. For that reason the amount was reduced from 500,000 to 200,000 bushels."

Mr. Glover: "You are authorized by law to prescribe rules and regulations, are you not, that would prevent this?"

Mr. Duvel: "No."

Mr. Glover: "You do not have that authority?"

Mr. Duvel: "Not under the present law, except as we require reports from individual traders."

Mr. Glover: "Now, if the names of these parties who were trading in the future market were made public, if the public had the information, a thing like that would not happen, would it? If the public knew (Tr. 477) just what was going on they would not permit it to go on, would they?"

Mr. Duvel: I think probably there would be no futures market under such conditions. I think it is just the same as in any other transaction. Most persons in business do not want others to know what they are doing until they have accomplished it."

Do you recall ever reading that part of Dr. Duvel's testimony?

A. I think I read at least portions of it. I remember certain portions of it.

Q. Do you agree with what Dr. Duvel has to say on that?

Mr. Tierney: That is objected to as wholly irrelevant, immaterial and it has no bearing on this complaint and this hearing whatsoever, and it is clearly without the issues of tihs case.

Referee: Objection overruled.

(Complainant excepts.)

209 Witness: I think if Mr. Taylor knew as much about this whole situation as we do he could probably interpret correctly the statements that Dr. Duvel has made. There is nothing—

Mr. Taylor: Will you answer the question? (Tr. 478)

A. There is nothing in the Act that will prevent an individual from scattering his business about among various commisison houses, so that the amount that he holds with any individual commission house will be below the reporting requirements. And therefore does not need to be reported by the Commission house. But if the commission house carries several accounts for this same individual, even though the various accounts are below the reporting requirements in each separate account, the commisison house is required, by rules and regulations, to put these together and report them. And if the individual himself has an amount which is equal to or exceeds the reporting requirements, he has to report his posi-

tion in the market, under the requirements of the rules and regulations, regardless of whether the amount in the several commission houses separately is under the reporting requirements. (Tr. 479)

Q. So that if Mr. Cutten wanted to carry on an extensive operation in any one option, a way in which he could have met the complaint which is made against him here in this proceeding, would have been to have had twenty or thirty accounts, with that many firms, and keeping each account under 500,000 bushels?

Mr. Tierney: That is objected to.

Mr. Taylor: Just a minute, Well, excuse me.

Mr. Tierney: That is objected to as calling for the legal conclusions and opinion of the witness.

Referee: Objection overruled.

(Complainant excepts)

210 Witness: So far as the account being reported by the commission house, yes.

Mr. Taylor: Yes.

A. So far as the position of Mr. Cutten in the market being reported by himself, no.

And we would have had no reports from any firm, relating to Mr. Cutten's account, if that procedure had been followed by him.

Now, if Mr. Cutten has an account with a firm, to illustrate, one in the name of Maude Cutten, an account designated R. F. C., and account designated No. 20, which he has told his broker and which his broker comes here and testifies is maintained for someone else, (Tr. 480) those accounts, assume, are guaranteed by Mr. Cutten; assume that the orders on those accounts are given by him, and assume that the margin is furnished by him, I would simply say that I believe, according to the rules and regulations, that if those accounts are controlled by Mr. Cutten, the firms, in order to comply with the regulation, must report them.

Mr. Taylor: All right, will you define "controlled" now as you interpret it?

Mr. Tierney: Just a minute, I just want to get an objection in in advance as to this answer. I object to his calling for his legal opinion and conclusion and it is not cross examination. (Tr. 481)

Referee: Objection overruled.

(Complainant excepts)

Witness: For administrative purposes, if the orders ap-

pear to be given by Mr. Cutten, if the P & S statements are mailed to him, at least to his care, if the margins are put up by him, if the financial results of these should be transferred over to him, it would appear to me that he would control the account and I would hold that they should be consolidated and reported by the firm.

211 I assume that if they are not controlled by him they would not come within the regulations. I do not know that there has been any particular confusion on the part of the Board of Trade and on the part of the members of the Board of Trade, in determining and ascertaining what are the rules and regulations and what they mean, under the Grain Futures (Tr. 482) Administration, during the last several years. There has been some disagreement with respect to the interpretation of the law and disagreement with respect to interpretation of rules and regulations, and when such disagreements occurred, I have informed members of the Trade with whom I have had such disagreement, that we, of course, must depend for the interpretation of the law, upon our legal officials and we cannot accept the interpretation of them or of their attorneys.

Q. Have you an opinion from your legal division, interpreting the word "control" and that section of the Act relating to control?

Mr. Tierney: That is objected to as wholly irrelevant and immaterial.

Referee: Objection overruled.

(Complainant excepts)

Witness: I have not. I have never asked for one.

Q. This, then, is your interpretation of the law and not of any law division of the Department of Agriculture? (Tr. 483)

Mr. Tierney: Objected to. It is not cross examination. The witness is not a lawyer. I can furnish counsel a brief if that is what you want.

Mr. Taylor: Your Honor, this whole case rests right on this one point, as to whether this witness, as the head of this Division, can arbitrarily say this rule is to be interpreted in this manner, and because Mr. Cutten has not interpreted

212 it in the manner in which I interpret it, why Mr. Cutten is guilty of these acts of which we have charged him, which go to the character and the integrity and which are an effort seemingly on the part of the head of this department

of the Government to destroy this man. And it comes down to a pretty serious situation.

Referee: Well, objection overruled. You will have full opportunity to argue these points after you get the evidence before the Commission.

(Complainant excepts) (Tr. 484)

A. I did not interpret the law. I attempt to enforce rules and regulations as they are given to me and our work is well known to the head officials of the Grain Futures Administration and I know that the rules and regulations themselves, before they were promulgated, were submitted to the Solicitor's office, and in the absence of any instructions to the contrary, I proceed along those lines. I did not initiate this complaint and therefore I am not persecuting anybody.

We furnish the facts on which this complaint has been brought. We talked it over. I don't know that there was any formal recommendation, as far as that is concerned. I talked it over with officials, Dr. Duvel and his assistant, Mr. J. M. Mehl. I never talked to the Secretary of Agriculture about this case at all. (Tr. 485)

Coming back to the fall of 1931, when I testified that information then came to me that Mr. Cutten was not in compliance, or was not complying with the rules and regulations of the Department, other persons in this area, under my jurisdiction, failing to comply with the regulations of our Department, with reference to reporting, have been by me brought to the attention of the Business Conduct Committee. Three or four, I think, is the way I recall it. And the Business Conduct Committee thereupon called those three or four 213 members before them and the procedure that was followed was one that adjusted it to our satisfaction finally. (Tr. 486)

Mr. Haylor: How do you account for the fact, Mr. Fitz, that you did not report this situation as it came to your attention in 1931 to the Business Conduct Committee?

Mr. Tierney: That is objected to as wholly irrelevant and immaterial.

Referee: Objection overruled.

(Complainant excepts)

Witness: Because this was an entirely different sort of set-up.

Mr. Taylor: In what way?

A. In other cases, the individuals simply neglected to render reports, and the matter was brought forcibly to their at-

tention. It did not constitute the carrying of accounts under various and sundry codes or names or seem to be of that type at all. It was an entirely different character of case.

I do not know of any law or regulation that compels us to turn over to the Business Conduct Committee a think of this kind or character. There was not a gentlemen's agreement between our department and the Board of Trade that that would be the modus operandi of treating violators of the Grain Futures Administration. (Tr. 487) There has not been an arrangement of that kind. I am familiar with the phraseology of the Grain Futures Act and of that clause under which this proceeding is brought.

It is not my understanding that the Business Conduct Committee was created after the enactment of the Grain Futures Act of 1922 for the very purpose of dealing with and passing upon such situations of this character as would be brought to its attention by the local head of the Grain Futures Administration. The Business Conduct Committee was created
214 primarily (Tr. 497) as a means of contact in order that we might be able to report to them untoward conditions in the market and conditions which might tend to result in squeezes or corners or unwarranted price fluctuations. It did not have to do with the ethical conduct of the members so far as our department was primarily concerned. At least, that was not my understanding at the time it was created. The contacts were established in the meetings in the Secretary of Agriculture's office. I understand that it is the duty, under the rules and regulations of the Board of Trade established now—they have a good many broader duties than were assigned to the Business Conduct Committee as first created.

Q. Was Mr. Cutten the only individual reporting to you in 1930 and 1931 who failed to combine all accounts under his control in his reports?

Mr. Tierney: That is objected to as wholly irrelevant and immaterial.

Referee: Objection overruled.

(Complainant excepts)

Witness: He is the only one that I know of, I believe. I do not know of any others.

I know of other cases where firms were combining, other (Tr. 498) accounts, combining several accounts and putting them together and reporting them, some of the firms that are involved in this particular hearing. I do not construe this to

be a proceeding against these firms that have been brought in here to testify.

Mr. Taylor: In other words, Mr. Fitz, whatever tangents or ramifications this whole hearing may take, we get right back to the word "control"—don't we?

Mr. Tierney: The same objection—calling for his legal conclusion.

215 Referee: Objection overruled.

(Complainant excepts)

Witness: Not altogether.

Mr. Taylor: Well, partially?

A. Partially, yes.

Q. It simmers down to a question of interpretation of what constitutes control accounts?

A. No. (Tr. 499)

Assuming Mr. Tierney has an account in his name, he has an account in his wife's name, he has an account XYZ, or is operating for three friends, and assume that he furnishes the margin for all of those transactions and that he, from his own account, guarantees the other transactions and that he places all orders relating to those transactions and that he keeps all of those accounts under 495,000 bushels and they are all in one future and all relating to one commodity, (Tr. 500) he would be compelled to report the business and the transactions if he had open interests held for others and customers and that open interest was within the reporting requirements, he would be compelled also to report those.

Mr. Taylor: Where, in the regulations, do you find the words "for others and customers." I grant you the word "customers." But do you find anything in the regulation stating that if he hold these accounts for himself and others he must report?

Witness: There is a regulation here, which I believe will cover your point. "Each contract market (Tr. 501) shall make or cause to be made, by its non-clearing members, reports showing all or such parts of the facts required to be shown by or for clearing members as the Grain Futures Administration shall, from time to time specify."

216 Since the adjournment of last night I have gone into our records for the reports, if any, filed by Mr. Cutten with our Department subsequent to September, 1928. We find Mr. Cutten reporting up to (Tr. 503) the latter part of September, 1928, and no reports in October, November, and December of 1928, and no reports for the entire year of 1929.

We have in our records if he was reported by firms, the reports made to our Department by various grain firms of the position with that respective firm of Mr. Cutten, for the month of October, 1928." (Tr. 504) I will, during the noon hour, make a search of our record in our office to ascertain as to whether or not there were any reports filed by grain firms, covering Mr. Cutten's position with them or any of his accounts during the year 1929. I assume perhaps there were, but I cannot remember because there are many reports filed by brokers and many records, and without consultation of them—this was prepared (Exhibit 402) because it covered the two particular years that are in the charge here.

I did not, for the first time, receive information that some of Mr. Cutten's accounts were being maintained in excess of 500,000 bushels when the reports of the various grain firms with which Mr. Cutten was carrying accounts, namely, Clement Curtis & Company; James Kidston & Company; F. B. Keech & Company, and Jackson Brothers Boesel & Company, were made to us in February of 1930. (Tr. 505) I do not know that prior to February 3rd, some of these accounts were reported in excess of 500,000 bushels. They have been reporting in excess of 500,000 bushels ever since I have been in charge of the office. (Tr. 506)

I cannot give you exact figures of these account being in excess of 500,000 bushels in the year 1929. We have the record and they can be obtained, so far as they are reported by brokers. During the month of February, 1930, there were 217 reports made by Clement Curtis and by James Kidston on numerous days, of accounts of Mr. Cutten in excess of 500,000 bushels. At the end of February, 1930, these reports conveyed to our department information that Mr. Cutten was operating in grain, in wheat, in a number of accounts all of which were in excess of 500,000 bushels a piece. Under the regulations it is my contention that Mr. Cutten should have reported on these accounts to our department. (Tr. 507)

On that date I was put on notice that Mr. Cutten was in violation of the rules and regulations, as I interpreted them. He had failed to comply. When notice came to us at the end of February, 1930, that Mr. Cutten was carrying this grain with these grain houses who had reported and we found that Mr. Cutten had not reported, I do not member that we did anything about it, at least that we made formal demand on him for reports. He had already been called upon to report and comply with regulations. He had been callel upon prior to this

for reports in the various documents that were submitted yesterday, which you hold. The last date we called on him for a report, prior to February, 1930, (Tr. 508) is the last letter communication of which we have a carbon copy, dated November 4, 1927. There may have been sent out regular circular or form letters, of which no copy was kept, but I do not know that that is a fact. The last letter of which we have a carbon copy in the files here is November 4, 1927. (Tr. 509)

At the conclusion of February, 1930, having gained information that Mr. Cutten had various accounts with various grain firms in excess of 500,000 bushels each, having gained information that Mr. Cutten, in accord with my interpretation of the rules and regulations of our administration, had not reported to me (Tr. 510) I do not member communicating
218 to my superiors any specific instance in regard to this particular case. The status of these various reporting firms have been under discussion at various times with my superiors and I do not remember any particular reason, in connection with this, why the matter was not pressed, except for this fact, that we thought we had sufficient information to be safe in reaching the conclusion that no dangerous situation was developing; that no corner was in the making or anything of the kind, and therefore, the matter probably was not pressed and followed up and insisted upon, other than the notice that had been formally sent him. We keep the files in the office in Chicago relating to correspondence with those in Washington, in the Department of Agriculture, who might fall within the classification of my superiors. I have had correspondence with Dr. Duvel, (Tr. 511) with Mr. Mehl,—Mr. Mehl is my superior. Correspondence with Mr. Mehl and with Dr. Duvel is in our files. (Tr. 512)

I do not know whether or not there were any letters written in 1929 or 1930, by me, or, in turn, by the Department to me, relating to the position of Mr. Cutten on the Board in his grain trades. I do not remember as to whether or not at the conclusion of February, 1930, I wrote to Washington and told Washington the situation with reference to this violation, the alleged violation of Mr. Cutten's. I will search my records again during the noon hour and if I find such correspondence I shall bring it with me. (Tr. 513)

At the conclusion or the end of February, 1930, with the information which was given to me by these various grain firms of the holdings by Mr. Cutten of grain in excess of 500,000

bushels in several accounts, and being then and there in-
219 formed that Mr. Cutten was not reporting to our department as I contend he should have reported, I did not take up this alleged violation on the part of Mr. Cutten with any person on the Board of Trade; any officer of the Board of Trade. (Tr. 515) I did not refer it to the Business Conduct Committee. I do not recall that I have mentioned it to any of the Business Conduct Committee. It is entirely possible that we may have done so, when in the general conference with the Committee when we were asking about the standing of various accounts and the situation. I have no recollection of having mentioned it specifically. (Tr. 516)

I believe during the month of March, 1930, certain of the grain firms in Chicago, with which Mr. Cutten carried accounts, reported accounts to my Department indicating holdings by Mr. Cutten in those accounts in excess of 500,000 bushels. The record will show, at least. In the month of April, 1930, there were accounts, according to the summary and compilation of figures prepared by me and in evidence as "Complainant's Exhibit 402", which indicate that Clement Curtis during that month reported a number of days wherein accounts exceeded 500,000 bushels, all relating to the alleged or so-called Cutten accounts. At the end of April, 1930, Mr. Cutten did not, in accord with my interpretation of the rules and regulations of our Administration, file any reports with me of any character whatsoever. (Tr. 517) So that at the end of April, Mr. Cutten, for at least January, February, March and April, had failed to file reports with me evidencing his holdings of wheat in these accounts which had been reported upon by the grain firms.

From time to time, in consultation with Dr. Duvel particularly, who is Chief of the Administration, we have talked over the situation, and I presume that very likely, and I feel quite sure that it was the case, we discussed this particular situa-
220 tion—not as a matter of a violation, but as to whether or not it was necessary to press this in order to determine just what Mr. Cutten's position in the market was.

Q. Do you consider, Mr. Fitz, that this was any less a violation prior to the end of April, 1930, than it is today?

Mr. Tierney: That is objected to as calling for his incompetent opinion, legal opinion, and conclusion. It is wholly irrelevant and immaterial, what Mr. Fitz may think about this. (Tr. 518)

Mr. Taylor: That might be true, were it not for the former

answer in which he has stated, Mr. Referee, that he discussed this matter with his superior, Dr. Duvel, not from the standpoint of violation but from the standpoint of whether they were approaching a dangerous position. Now, I have, I maintain, the right to go into this witness as to what this discussion was about, and if it was not a violation then or they were not discussing it from the standpoint of being a violation, whether it was any more serious on this occasion as a violation than it was at that time.

Referee: Objection overruled.

(Complainant excepts.)

Witness: I may say that we were using these reports for the purpose of trying to keep in touch with the market situation, and we assumed that we were getting practically the standing in the market, and I never dreamed for a moment that there was a splitting of accounts and carrying of accounts under the names of various individuals and the situation existing which subsequently developed.

I do not remember a specific instance in this case of what our department did to ascertain the true status of these accounts when this notice came to me at the conclusion of each month when reports were made by the various grain houses to me, but I do know that we occasionally examined books and records, but if we went over to one of these grain
221 houses (Tr. 519) and examined the records of Mr. Cutten's account and found that it was being properly reported, unless we discovered some clue that there was an additional account carried in the name of other people, and that the proceeds of the accounts were subsequently transferred into Mr. Cutten's account, we had a perfect right to believe and assume that the books showed the true status.

I do not know that from the first of January, 1930, to the last day of April, some one under me, some one of our accountants checked on these accounts from which reports were being made to me relating to Mr. Cutten's holdings. I do not know whether or not I sent anyone to check on these accounts during that period. We send men every few days here and there, and it is impossible to remember at this date whether the men were sent to a particular office on a certain date or not. (Tr. 520) It would not be necessary to send anyone there to determine that particular fact. I did not feel we necessarily had all the information we wanted, simply from the fact that reports were given to us by the grain firms with which these accounts were being carried, but perhaps

all that apparently was necessary in order to keep in touch with the market situation and whether or not any dangerous situation was developing. I would not say I was not interested in the violation of the rules and regulations. I was interested in violations, certainly. (Tr. 521) And one of the functions of my office and one of my duties was to observe and ascertain as to whether or not the rules and regulations were being violated. And as a part of that function and duty, it was my duty to report that situation to Washington when ascertained by me.

I feel quite sure that we discussed the situation as a whole during the year 1930, and it is quite true that undoubt-
222 edly we did discuss whether or not we were getting an individual report from Mr. Cutten. The discussions are nearly always had with Dr. Duvel, because he is the Chief. (Tr. 522) We did not, during 1930, prior to the last day of April, 1930, discuss the alleged violations of Mr. Cutten in connection with these accounts on which these grain houses had reported, from a violation standpoint. I believe that I had told Dr. Duvel, during this time, in reply to his discussion of the market situation, that we were not at that particular time getting a report from Mr. Cutten. (Tr. 523) It is possible that we may have mentioned it to my assistant, Mr. C. M. Fritz. It is possible that we may have mentioned it to the Auditors in the Department there. I am not sure that we did, but it is entirely possible that we did because we usually discuss some of those things. It is entirely possible that I did talk it over with our Auditors. I have no recollection as to whether we did or not. I know what the usual practice is in the office. (Tr. 524)

The compilation of figures which I have prepared, and which are in evidence show that in the month of July, Jackson Brothers Boesel & Company, and Clement Curtis & Company, reported to us accounts in the name of Mr. Cutten, in excess of 500,000 bushels. During the month of July, 1930, as these reports came in from these various grain firms, no (Tr. 525) reports were received by our department from Mr. Cutten. I have no recollection at this time concerning the month of July, 1930, as to what may or may not have been done by me with reference to Mr. Cutten's failure to report. At this point, the end of July, 1930, I did not report to the Business Conduct Committee of the Board of Trade, the situation that was present in Mr. Cutten's account. I have no recollection of ordering any of my accountants (Tr. 526) or

auditors at this time to check and analyze the accounts
223 of Mr. Cutten which were being so reported to me by these grain firms.

The names of the accountants and the auditors employed in the Chicago area under my jurisdiction in 1930 were Mr. A. W. Mayo, E. W. Davis, and Mr. E. M. Blaylock. (Tr. 527) Mr. Bagnell was transferred here last October. Mr. Bagnell did not come on here to prepare this case. He has been doing work here other than the preparation of this case. I cannot tell which accountant and auditor in my department had the examination and inspection of the books of any given firm. (Tr. 529) We have detailed at the Chicago office here at the present time, Mr. Mayo, Mr. Blaylock, Mr. Bagnell, and Mr. Watt, who is a new man. These gentlemen were not all here in 1930. Mr. Mayo and Mr. Blaylock were. Those are the only ones who belonged to the Chicago office at that time. Mr. Bagnell has been here occasionally, doing special work, and I am not sure whether he was here in 1930 or not. Any inspection and examination of the books of Clement Curtis, James Kidston & Company, Jackson Brothers Boesel & Company, F. B. Keech, and Bartlett-Frazier, made prior to 1932, from an auditing standpoint, would have been made by either Mr. Mayo or Mr. Blaylock. (Tr. 530) It is entirely possible that someone else may have been sent to the office to check up some particular transaction or report of something. I have gone myself sometimes to look up some particular incidents, to the various offices, but not to make any extended examination or audit of accounts.

I did not know that in July of 1920, Mr. Finley, who had been acting as secretary to Mr. Cutten, left him and a young lady named Miss Kellenberger took up the duties of secretary to Mr. Cutten. I could not tell you when I first found out. Miss Kellenberger came to my office once or twice in response to rendering reports, and I do not remember or have any recollection as to the date. In fact, to the best
224 of my knowledge and belief I would put it as around in early 1932. (Tr. 531)

Mr. Tierney: Complainant at this time offers, as a part of the direct examination of Mr. Fitz, "EXHIBIT 403", a letter of date March 15, 1932, addressed to A. W. Cutten (Tr. 532) 231 South LaSalle Street, Chicago, Illinois.

Referee: Is there objection?

Mr. Taylor: None, no.

Referee: It will be received.

Directing my attention to "Complainant's Exhibit 403", I would say it was following March 15, 1932, that Miss Kellenberger came to my office to deliver to me certain reports that I called for from Mr. Cutten. I could not say for sure that I talked to her on the 'phone before that. I might have, and yet I have no recollection that I did, although I may have done so. I do not know whom I talked to over there by name at all. I called up several times and asked for the person in charge of the records who made the reports for Mr. Cutten. (Tr. 533) I do not know for sure, but my impression is that I did not call up in 1931 in regard to the reports of Mr. Cutten. The same is true for 1930.

I did not bring anything direct to Mr. Cutten's attention by calling his office after calling on him for reports, until we transmitted this letter. This came because we had ascertained that there had been a failure to report certain grains, certain futures, to include them in reports that had already been filed. (Tr. 534) I did communicate with him by these letters. Prior to the dates of these letters, January 6, 1931, and January 15, 1931, no communication was directed to Mr. Cutten since my letter to him of November 4, 1927. I
225 never had any conferences between the date November 4, 1927, and the date of the letter to Mr. Cutten, which was accompanied by form of instructions for filling in Form 113 G. F. A., and January 6, 1931, a period of approximately three and one-half years. No conferences were had as between my department and any representatives from Mr. Cutten's office. (Tr. 535) So far as the record is concerned, we find no special notice being given to Mr. Cutten by our department between November 4, 1927, and January 6, 1931, other than the two letters accompanied by instructions, which are in evidence. That does not take away the requirements under the regulations, though. (Tr. 536)

I do not know whether other members failed to report at this particular time or not. I could not tell without a check-up on the (Tr. 537) records. I have no vivid recollection of what happened back in 1930. I am saying that I do not know from this witness stand without an examination of the records whether there were other violators. I have a decided recollection as to the instant case (Tr. 538) because I have looked it up and checked it up.

I recall testifying yesterday that there were two or three instances of persons who were in violation of the rules and regulations of our department and that the procedure that

was followed by us, with reference to those violators, was to report them to the Business Conduct Committee. (Tr. 540) It was last fall, probably August or September, as near as I can remember off hand. They were all handled at the same time.

During 1931, I think it was, along in the summer of 1931, we were examining books and records, and we had some cases where we were refused a chance to examine books and records, and the matter was reported to the Business Conduct Committee and was also reported to the officials of the
226 Board of Trade. (Tr. 541)

I am not sure about the number that were reported to the Business Conduct Committee last fall for failure to report. There were possibly three or four. We had another case where we asked for the identification of an account and which the Business Conduct Committee or the officials of the Board were just as anxious to get the identification as we were. There was difficulty about getting it (Tr. 542) for some time.

It is not a fact that during 1927, 1928, 1929 and 1930, our department was not attempting to force Clearing House Members, or non-Clearing Members to comply with these instructions. (Tr. 543) It is not a fact that the policy of my department was not to enforce the rules and regulations with reference to reporting violations unless it was taken up with Washington.

There was no gentlemen's agreement that violations of the character of this particular case were to be reported or referred to the Business Conduct Committee. (Tr. 544) The working agreement with the Business Conduct Committee had to do with practices and things other than covered by the Grain Futures Act, in order that we might be mutually helpful in attempting to keep the market in order. (Tr. 545) There was no working agreement between the Secretary's Office and the Board of Trade officials or the Business Conduct Committee that violations of this character were to be reported to the Business Conduct Committee. I do not know whether I know all of the arrangements and agreements made by my Chief and by Secretary Hyde, who was then my Chief, with the Board of Trade. (Tr. 547)

I know Mr. Boylan. Mr. Boylan is Vice-President of the Chicago Board of Trade. (Tr. 548)

227 Mr. Taylor: I ask to be marked for identification the testimony of Dr. Duvel, appearing on pages 12 to 40, in-

clusive, in the pamphlet entitled: "Hearing before the Committee on Agriculture, House of Representatives, 73rd Congress, 2d Session, on H. R. 8829"—also, in the same volume the testimony of Robert P. Boylan, appearing on pages 131 to 148, inclusive, (Tr. 551) as respondent's Exhibits F and G, reserving the right on the part of the respondent to incorporate into the record only such parts of these statements as respondent may desire so to do, and, of course, according to the complainant, in the event that the Referee permits the introduction of these exhibits marked for identification in evidence, the same privilege. I now offer them in evidence and ask that they be received.

Mr. Tierney: To this offer the complainant objects for the reason that it is an attempt to get testimony into the record without an opportunity to cross examine the witness. If counsel will say that the respondent will produce Robert P. Boylan here for cross examination, we will withdraw the objection. I would like to cross examine him on this subject.

Referee: Objection overruled.

(Complainant excepts) (Tr. 552, 553)

Yesterday my attention was directed to "Exhibit 142" and I said Mr. Cutten was short July wheat 6,600,000 bushels May 24, 1926. (Tr. 554) On May 24, 1926 I knew Mr. Cutten was short July wheat 6,600,000 bushels. At that time nothing was done by my department when the information came to me that Mr. Cutten was short 6,600,000 bushels of wheat. (Tr. 556) I do not know if I reported that to the Department of Agriculture in Washington. It is possible that it may or may not have been reported. I don't be-
228 lieve I reported it to the Business Conduct Committee. There is a possibility I did. If it had been reported at all it would have been reported to the whole Committee, I believe. I cannot swear that I did not. It is the best of my knowledge and belief that I did not. (Tr. 557)

When Mr. Cutten was short 6,600,000 bushels on May 24, 1926, as testified, I did not report that circumstance to the Business Conduct Committee of the Board of Trade to the best of my knowledge and belief. I presume I reported that situation to some one of my superiors in the Department of Agriculture in Washington because they were kept in very close touch with the holdings. It would show on reports rendered, although the total amount might not show unless we sent a duplicate of the individual report. We did that in many cases, but not in all. When I testified that Mr. Cutten

was short 6,600,000 bushels I meant that that is indicated by the record from which I was testifying. (Tr. 563) I was reading directly from the report rendered by Mr. Cutten. We have some confirmatory reports, or at least certain fractions of it, from the various Commission Houses, showing his position in the market, and whether those would total this same amount I have no means of knowing. (Tr. 564) I offered no testimony except to the fact that this report showed, from his own statement, that he was short this much in the July wheat futures in Chicago. I did not know on May 24, 1926, how much cash wheat Mr. Cutten held. I did not concern myself with his position in Winnipeg. So when I say he is 6,600,000 bushels of wheat short I mean that he was short on the Chicago Board of Trade. (Tr. 565)

We hear a good deal about spreading between markets and between futures and between grains, and sometimes we have some knowledge when the spreads are between markets
229 in this country and occasionally some knowledge in spreads between Winnipeg and this market, but usually (Tr. 566) very little knowledge. I know nothing about Mr. Cutten's transactions along the line of a spread. The records of the books of the Commission Houses through whom he placed his Winnipeg trades would show it if he placed his trades through a Chicago firm. That Chicago firm would show the Winnipeg trades. If the transactions were placed through a Winnipeg house and the transactions were executed on the Winnipeg Board of Trade or market, there would be no information, no notice of that come to me through (Tr. 567) any official channels. We sometimes do occasionally see some of the accounts in Winnipeg futures, but that is merely incidental.

I have no knowledge of Mr. Cutten's position in the Winnipeg market. On the very day that I testified he was 6,600,000 bushels short July wheat in Chicago, for all I know he might have been 6,600,000 bushels long in Winnipeg, in the same option, or might have been that much short. I have no means of knowing it. I testified simply and solely regarding his position on the Chicago market. (Tr. 568) I know nothing about his holdings in Winnipeg. I know nothing about his position in Winnipeg at that time, or any other time; whether he was long or short. (Tr. 569) And on the same dates on which I testified as to his short position, I knew nothing about his position in cash grain. I can find out if you want me to.

Yesterday I testified that I had met Mr. Cutten once that I knew of, and possibly twice. (Tr. 570) I have seen Mr. Cutten many times. I met him one time in my office. I do not remember the date exactly, but my impression is that it was soon after I came to Chicago. He came over to the office and Dr. Duvel was here at the time and he introduced me to Mr.
Cutten. I remember that one time very distinctly. To
230 the best of my belief, he was also at the office one other
time, when Dr. Duvel was here, but I would not state that positively. But I do know that I did meet him once and was introduced to him by Dr. Duvel. My best recollection is that I met him some time in 1925 in my office. (Tr. 571) It is my impression that I did meet him the other time, but I am not positive about it at all. He came over, I believe it was to see Dr. Duvel about some matters. I do not recall just what it was. My meeting was just simply incidental. I happened to be in the office at the time. I have never talked to him on any matters that are in issue in this case at any time; he never has come to me for any information or any lack of information, and I have never gone to him. (Tr. 572) I have never gone to many of the other prominent speculators in the market at all. It is not my idea they ought to come to me. There is no reason for either way that I know of. (Tr. 573) Miss Kellenberger brought over a set of reports to my office in compliance with my letter of March 15, 1932. (Tr. 574) I believe I testified to the fact that there was a similar or identical letter of instructions and dummy report enclosed with this letter, "Exhibit 271", as was enclosed to him when we first called on him for reports in 1926.

In my letter of January 6, 1931, which is in evidence, I also accompanied that letter with a form of instructions for filling in Form 113 G. F. A.

Q. What I want to get in the record is as to whether or not the forms of instructions that accompanied your various letters to Mr. Cutten were the same.

A. I do not know that they are absolutely the same word for word in every case, because there may have possibly (Tr. 576) been some change made from the very first original one
to a second one, but nothing of importance that I know of.
231 Q. Now, yesterday, when you were interrogated by Mr.
Tierney, Mr. Tierney asked you: "Did you enclose blank forms and forward them to him at that time?" That relates to "Complainant's Exhibits 101, 102, and 100". And you testified: "I enclosed blank form No. 113". Now, the important

thing from our standpoint is to obtain from you what changes have been made by you or by your department in your instructions for filling in Form 113 G. F. A., from 1926 to date. I ask you—have there been any changes in those instructions?

Mr. Tierney: That is objected to as wholly irrelevant and immaterial.

Referee: Objection overruled.

(Complainant excepts.)

Witness: I would not want to swear that there had not been a change of a possible word or something of that kind, but to the best of my knowledge and belief there has been no change in the principles affecting the reporting requirements.

I would know if the change was made at the time, but to testify now with respect to the change of a mere word or something of that kind, which may have occurred three or (Tr. 577) four years ago, merely from memory, I could not do it. Any changes of substance would have to have been pursuant to my order and would have been known to me. I do not believe there was any change that was particularly vital, so far as I can recall. In other words, these instructions for filling in Form 113 G. F. A. were, as I believe, except for possible minor changes in phraseology, the same form in 1925 as they are today. As affecting the important points of the reporting requirements, I do not believe there was any change of vital importance whatever, to the best of my knowledge and belief. This form of instructions for filling in Form 113 G. F. A. (Tr. 578) serves the double purpose of either 232 brokerage house or individual, as the case may be. The phrase, "Use number instead of firm name in filling out this line, this to prevent accidental disclosure of your firm's business" would apply to a firm or an individual, either one, that reports under a code number. The phrase "this to prevent accidental disclosure of your firm's business" was incorporated and used as an instruction to an individual because I made it out myself and used it for that purpose. I meant to convey to the individual in saying to him "This to prevent accidental disclosure of your firm's business" the individual may have customers, may have business for himself or others, does have at times. We have had cases of that kind. He would then be referred to as a firm. We have cases on the Board of Trade here where you take a firm—take P. B. Carey, for example—It is known as P. B. Carey, but it is a firm, however. (Tr. 579) We have a number of cases of that kind, cases on other markets.

I understand the expression "clearing member" to mean a man who belongs to the clearing corporation and has the privilege of clearing his trades. I do not remember that there is any difference in the definition that is given for clearing member in the rules and regulations of the Grain Futures Administration as originally adopted. I do not remember the definition in the regulation as adopted on September 21, 1922, with respect to contract markets for controlled accounts. I do not learn those by heart and carry them in my head. If I have occasion to refer to them, I get out the rules. I do not recall now whether there was a definition of controlled accounts in the regulations or not. (Tr. 580) One of my duties is to be pretty familiar with these rules and regulations as far as they affect our work. I cannot tell you anything
233 about exactly how the definition reads. I do not remember whether there is a definition of controlled accounts in the rules and regulations, originally adopted in September of 1922. (Tr. 581) I believe there is a definition in these rules and regulations of the phrase "clearing member". A clearing member is a member who belongs to the clearing corporation and has the right to clear his trades through that clearing corporation. At least, that is the present definition now. (Tr. 582)

We have had a change in the market situation since this Grain Futures Administration began to function. We now have a clearing corporation on the Board of Trade, which we did not have earlier. I know of no other definition of the phrase "clearing member" than those which appear in the rules and regulations adopted September 21, 1922, with respect to contract markets. (Tr. 583)

I have brought with me the office records which will show the transcripts of reports rendered by the brokers prior to those scheduled in "Exhibit 402". I have not had sufficient time to compile this into a consolidated report, showing all of Mr. Cutten's trades. (Tr. 585)

I believe I stated this morning that to the best of my knowledge and belief there was no important change in the important things affecting the reporting requirements, after the first set of instructions were sent to Mr. Cutten. As far as I am able to tell from a brief examination, I do not recognize any change from the important requirements in connection with the rendering of reports. I am responsible for adding the words, "In any one future", in the fourth paragraph from the bottom after the words "of rye", in the form of instruc-

tions for filling out form 113 G. F. A. (Tr. 597) There was never any change other than the clarification of it. It all refers to Section 2, Paragraph F. (Tr. 598)

234 On November 4, 1927, an original of "Complainant's Exhibit 271" was sent by me to Mr. Cutten. To the best of my knowledge and belief one of these letters giving definite instructions about filling in reports was enclosed. (Tr. 599) I do not know whether it was an instruction which bore the words "in any one future" after the words "of rye" in the fourth paragraph from the bottom, or one that I have placed in evidence as "Complainant's Exhibit No. 100." I do not know when the words "in any one future" were added to our instructions. If any change were made in the instructions which were sent to members, clearing members, or to other members of the Chicago Board of Trade, such a change would have to be authorized and approved by me or my office. I said I could not give you the date upon which that (Tr. 600) change may have been made. The change was made to simply make even clearer the requirement which is contained in the regulation itself, and which refers to one future only. The fact that one instruction wherein the words "in any one future" are omitted and the fact that another instruction has been issued by our office wherein the words "in any one future" have been added and incorporated therein, does not indicate any ambiguity. It does make it a little easier for clerks filling out these reports to comprehend. This was not put on for the special benefit of Mr. Cutten or any individual of that kind. We have many of these reports rendered by clerks in the various offices and many times they prepare reports hastily and (Tr. 601) they are not careful in rendering those reports. Therefore this was put in in order to clarify the situation to them and make it easier for them to comply with the law. However, it does not change in any way the particularly important requirements as to reporting, which have always been the same. Mr. Cutten does not always

235 stand out as an isolated transaction in any answer I make to your questions. I believe these instructions with the words "in any one future" were issued to Mr. Cutten as well as these clerks for whom I wanted to clarify this report. We keep a supply of those instructions in the files and when a call is sent out, especially for the first time, and often times for the second time, maybe oftener, we include a set of instructions. I testified that at least on two occasions we did enclose a set of instructions to Mr. Cutten. (Tr. 602)

The form, "Exhibit 100", went to Mr. Cutten the first time a call was made. (Tr. 603) This change in the type of instruction with the words "in any one future" added must have occurred at some date between November 4, 1927, and March 15, 1932. I do not know the date. (Tr. 604) I have no record or means of knowing when those four words were added. (Tr. 605) They are a change in the instructions to the extent that they clarify and make it easier for them to report. The first instruction refers to Section 2, Paragraph "F", and if you will refer to that particular section in the rules and regulations you will find that it provides (Tr. 606) for one future. There is nothing specifically stated in this instruction that refers to the clause which I have incorporated in the amended instructions "in any one future" other than the reference to Section 2, Paragraph F. I stated this morning that the instructions for filling in form 113 G. F. A., which accompanied my letter of November 4, 1927, and January 6, 1931, to Mr. Cutten, were drawn by me in such a way we used them to cover individuals as well as firms. The words following "trades today" appearing on "Complainant's Exhibit 100", relate to statements to be filed by individuals. The words under the head of "aggregate of all long and all short open accounts" in the third line, which says "this includes both your own and your customers" relates to an individual.
236 If he had customers he would report customers; if he had nothing but his own he would report (Tr. 607) simply his own. It is a fact throughout the instructions that the word "firm" is used in a number of cases. We require the same information from the individual as from the firms, and, therefore, we did not prepare a separate set of instructions.

I have at times, since I came to Chicago as the head of the Grain Futures Administration, prepared or disseminated among the Board of Trade members, other instructions than those as set forth in these two instruments,—Instructions for filling in forms 100 and 101, which are reports required from clearing members only. But for non-clearing members I have not given out any other instructions than these in mimeograph form. (Tr. 608) We have given them information whenever they come to the office, or we have gone to them. If questions have arisen we have instructed them as to the proper procedure. We have very cheerfully given them the information at any time.

I have not given out any other form instructions of that type. They have been in letter form, in connection with cor-

respondence to firms or to individuals—not to the entire personnel; to individuals, as the case may be. (Tr. 609)

Q. Now I will ask you, have you sent out any other form instructions to non-clearing members than those appearing as "Complainant's Exhibit 100" which you have seen—

Mr. Taylor: And mark this for identification Respondent's Exhibit H.

(Whereupon, Exhibit H, Respondent, was marked for identification.)

Mr. Taylor: (Continuing) —and Respondent's Exhibit H, for identification, which I hand you.

A. There has been no general form of instructions dif-
237 fering materially in the important factors of the reporting requirements, other than these two. ("Exhibits 100" and "Exhibit H".)

Mr. Taylor: I offer in evidence RESPONDENT'S EXHIBIT H and ask that it be so marked.)

Mr. Tierney: We object to Exhibit H for the reason that there is no proper foundation laid for its receipt and no showing that Mr. Cutten at any time ever received this Exhibit H, and no showing where it came from or who produced it and that it has any bearing whatsoever on this case. It is just a form.

Mr. Taylor: Now the witness has testified that it is (Tr. 610) a form that he has been using to send out to non-clearing members.

Referee: Objection overruled. It will be received.

(Complainant excepts.)

I have no recollection of the time when the original instructions for filling in form 113 G. F. A. were amended by me by adding the words "in any one future" to the fourth paragraph from the bottom thereof. It was some time subsequent to the sending out of the first set of instructions and the receiving of the reports. As to date, I am not able to fix it at all, Mr. Taylor. I would be very glad to. It might possibly have been in the last year. I don't remember. (Tr. 611) It is possible it might have been done within the last four years. I don't remember when it occurred. In the natural course of handling the reports, we found that some of the clerks were making errors and didn't understand, and in order to clarify it, more for the special benefit of the clerks, we had added those four words. I cannot tell whether or not this form was the form sent to Mr. Cutten in my letter of

March 15, 1932. I couldn't swear to it and be sure. I
238 presume that that letter with the four words was un-
doubtedly not the form that went to (Tr. 612) him first. I testified to that and I will repeat it. And I have repeatedly testified and will repeat again that I am unable to fix any date. (Tr. 613) It has been made within the last four years. They were disseminated in order to clarify the reporting requirements to the clerks making it out. It makes no change whatever in the reporting requirements. (Tr. 615) The point is that the words "in any one future" is not a change in the reporting requirements. The reporting requirements were just the same before and are now. The requirements for the correct filling in of the reports of the G. F. A. are just the same now with those four words added as they were before, absolutely. (Tr. 616)

In "Exhibit 403" addressed to Mr. Cutten there were incorporated the regulations contained in my letter of the 15th of March, 1932. I did not have it in a letter. I do know this, Mr. Taylor, that when these amendments (Tr. 617) were first promulgated they were also sent at the same time to the Board of Trade officials, and they were requested to notify their members, and their records, I believe, and I have been so informed, will show that a complete copy of all of these amendments quoted here, and some others, that were promulgated on January 20, 1926, were forwarded to each member of the Board of Trade.

This is my signature appearing on my letter of January 6, 1931. And this is my signature. These are the two letters referred to at the bottom of "Complainant's Exhibit 403", wherein it says, "your attention was directed to this matter in our letters of January 6, 1931, and January 15, 1931." The regulations are not quoted on those letters. (Tr. 618) The regulations are not quoted in "Complainant's Exhibit 103"
which is in evidence, and which purports to be a letter
239 from me dated February 11, 1926, addressed to Mr. W. A. Cutten. There is no letter, however, that I know of direct from our office quoting all the rules and regulations. (Tr. 619) "Complainant's Exhibit 403", dated March 15, 1932, does not deal with the method of reporting at all. That deals with certain requirements which I found he had not complied with. These requirements that I directed attention to in my letter of the 15th of March, 1932, have been present ever since January 20, 1926. This is the first time that I ever quoted them in a letter. That is not the first time that I brought them

to his attention. I have brought certain requirements to his attention, certain parts of these things before. (Tr. 620) That is the first time I had written to Mr. Cutten quoting completely the rules and regulations as set forth in that particular letter of March 15, 1932. (Tr. 621) I do not know that we quoted the regulations in the call for reports that we first sent to him. (Tr. 622)

We have found out by examination of the records which we were making that there were evidently accounts that had not been reported and open interest held in the name of Mr. Cutten that had not been reported and had not been included in reports which he should have made, and we were compiling at that time for the Washington office certain statements of accounts, going over a certain period, and we wished to include in that, all accounts, including those covering the month of December, 1931. This required Mr. Cutten to go back and render reports for a back date which he had failed to file, and the words "for the present" were included in the letter because we did not know whether we were going to ask him to go on back and render further back reports or not. We were asking him at this particular time to begin with the close of
business (Tr. 623) November 30, 1931, and to bring his
240 reports up-to-date as he should have done. That is the
explanation of the words "for the present". The data was to be used for statistical purposes.

I cannot give you the exact date, but within a very reasonable time after my letter of the 15th of March, 1932, Mr. Cutten filed reports with me beginning with the close of business November 30, 1931. I realized it took some time to go back over records and prepare those. There was no complaint about them not coming in promptly then. The reports were delivered to me by Miss Kellenberger, Mr. Cutten's secretary, in person. She brought over (Tr. 624) some reports on, I think two different occasions. I do not recall that she asked whether they were satisfactory and in proper form. The reason I am saying that is because I would not have been able to check those very carefully in the brief time she was there. I believe she asked me about some current reports of that kind that came over and these others were submitted. Whether she brought the reports for the month of November in personally, I could not say, but so far as I knew they included what was required at the time she was there. Now, if a subsequent examination and checkup of the records would prove they were complete or not, I do not know without a

comparison with the records. It would not be possible for me to look at a bunch of reports handed to me at the desk and tell whether or not they were correct. (Tr. 625)

I recall Miss Kellenberger bringing in a certain set of reports, and it seems to me, to the best of my recollection now, that these dealt with some rather current reports. They were brief and appeared to be perfectly satisfactory. Now, whether there was some conversation about the reports rendered for the month of November or not, I am not able to state. I know that we received the reports in a very rea-
241 sonable length of time after the letter of March 15, 1932.

I know nothing else about her activities whatever. This was the first time I had ever seen Miss Kellenberger. (Tr. 626) I do not know whether I have had any correspondence or letters signed by her in the meantime or not. During the time that Mr. Cutten was in violation of the requirements of my administration to report, I know I did not have an acquaintance with Miss Kellenberger. Now, just when I had the first contact I am unable to say. My best recollection is that after I sent the letter of the 15th of March, 1932, "Complainant's Exhibit 403", she came in on a couple of occasions to comply with the requirements. That was the first occasion of my meeting with her. (Tr. 627)

I recall testifying to the short position which Mr. Cutten held in 1926 and in other years. If Mr. Cutten were short some 6,000,000 bushels, he would either have to buy it back some time or make delivery. The usual speculative account buys back or sells out their open interests and does not make or take delivery usually. (Tr. 628) We would not necessarily know about delivery unless there had been some special check-up made. He could cover his short interest or liquidate his long interest. In any options in which it appears Mr. Cutten is short, either in the figure of 6,000,000 or 11,000,000, or whatever the figure may be, he would eventually have to buy it back or make delivery. In these options in which he was engaged in 1926, 1927, and 1928, he did cover that short position by purchases. (Tr. 629)

The regulations, the reporting requirements, which were adopted by the Grain Futures Administration, under the administration of William M. Jardine, in 1926, on the 20th day of January, 1926, provide that "whenever any member carries, or has under his control more than one account with any clearing member of a contract market and the total volume

of such accounts is equal to or in excess of the amount
242 fixed in accordance with subdivision "F" of Section 2 of
these rules and regulations, then the total long and the toatl short position of all such accounts shall be reported and the names of all persons interested in such accounts shall be furnished to the supervisor in charge." I know of no regulation or requirement adopted by the Secretary of Agriculture which provides that a member should report on an open contract over which he exercised any "direction". (Tr. 630)

In my letter of March 15, 1932, "Complainant's Exhibit 403", I say, "Be sure to include in such reports each and every account in which you have an interest in the open contracts or over which you exercise any direction or control." What we were trying to get included were accounts upon which the person might give the orders and have the reports rendered, and P & S statements rendered to them, and remittances, as to profits and losses, as the case might be, and the margin requirements, and all of that. We believed that an account of that type was under the direction or control of the individual or the firm exercising that jurisdiction over it. (Tr. 631) I may not have used the word "direction" in a legal sense. To my lay mind, I had associated this question of "direction" as a part of the "control" of the account. (Tr. 632).

My authority to demand of members that they report on any open contracts over which they exercise any direction, arose from my interpretation of the first paragraph of subdivision "F" of Section 2, under the word "control". In discussing the question of control, both with my superiors and also with Board of Trade officials, in working along that line, we have always considered that an account upon which some individual, as I have stated (Tr. 633) before, gave or-
ders or had P & S statements rendered to him, or put up
243 the margins and participated in the profits and losses,
those accounts were accounts belonging to that individual or firm, so far as responsibility is concerned. I don't believe it is necessary to have all of those factors present. The orders are often given by some other person. The rather vital thing is the rendering of the purchase and sale statements and the putting up of the margin. In the last analysis it is a question of who paid the losses or received the profits, so far as the accounts being under their control.

Q. Well, isn't the all important thing, in determining whether accounts are controlled or non-controlled, the question of the property rights of a given person in that account?

Mr. Tierney: That is objected to as calling for a legal opinion and conclusion of this witness and not cross examination. (Tr. 634)

Referee: Well, you just give us your ideas, irrespective of what some lawyer might do, Mr. Fitz.

(Complainant excepts.)

Witness: Well, I will say frankly, that I have never attempted to analyze the matter that far, in connection with the fine point of whether an account was controlled or not controlled. If I believed, for administrative purposes, that the account was controlled, I would ask for it, and would seek to get the information that I was entitled to. If I was refused, I would submit the proposition to my superiors or to the proper legal authorities for ultimate decision.

The whole Cutten case was submitted to the Solicitor of the Department of Agriculture before decision was made to proceed in this matter. I think the final submission and decision was made either the latter part of March or early in April some time. I don't remember the exact date. I did not submit it myself. (Tr. 635) I am informed that it was submitted by our Washington office. I understand that
244 Dr. Duvel and Mr. J. M. Mehl and Mr. Tierney were in conference about the matter with the Department Solicitor. I think I am correct in that. There was a submission of a good many of the details some time previous to that in a report from our office. As a completed proposition, Mr. Taylor, it was submitted not so long ago; along in the spring. Some of the original details were submitted quite some time ago; months ago. (Tr. 636)

Mr. Cutten's failure to report in 1930 was not formally transmitted by me to Washington by letter in 1929, 1930, and 1931. In consulting about the conditions of the market at times we have said that we had reports in there from firms indicating that, but we did not report it as a violation that he had not rendered an individual report. I knew he had not rendered an individual report in the successive months of 1930. (Tr. 637)

I do not know whether there was any information reaching Mr. Hyde that Mr. Cutten was not rendering daily reports. There was apparently information that reached Mr. Hyde, from what source I do not know, with respect to market operations. I did not talk with Mr. Hyde. I did not transmit any information to Mr. Hyde. I don't know what information may have reached him. In 1930 when the stock firms, Keech,

Clement Curtis (Tr. 638) James Kidston and the others, gave me the information that Mr. Cutten was carrying these various accounts in excess of 500,000 bushels, we did not formally call upon Mr. Cutten to render individual report. I may say that one of the conditions was that the indicated line was comparatively small, and we were watching for large lines of 5,000,000 or approaching 5,000,000, and we had no indication that there was anything large in there.

In August 1930 this report which has been compiled by me as "Complainant's Exhibit 402" indicates that Mr. Cut-
245 ten was long 1,000,000 bushels of wheat with F. B. Keech & Company, and 600,000 bushels of wheat with Clement Curtis & Company. When that information came to me there is no reason why I should have filed any complaint or brought that matter to the attention of the Business Conduct Committee of the Board of Trade. There was no reason why I should complain about it to Mr. Cutten except I could have called on him to render an individual report. (Tr. 639)

Mr. Cutten was not filing reports at that time. I had notice that Mr. Cutten was 1,600,000 bushels long, and if he was long to that extent, he was, under my interpretation of the regulations, called upon to report. The reports, however, from these firms would reach me probably the next day, sometimes not until the second day, and you will note that he was long for about three days and out, or short for three days and out. He was not in continually in large amounts. And so we did not press him for an individual report. The primary purpose of these regulations and the purpose of my position out here in Chicago was essentially regulatory and essentially corrective, to try to keep the market in order. And my duties were not at all times directed to the meeting of existing conditions. (Tr. 640) I never mete or attempt to mete out discipline to anybody. I never attempt to discipline anyone. That is not my province. But it is my province when I found a position in any one option attaining that which I defined as a dangerous position, (5,000,000 bushels or more) to take such remedial and corrective steps as in my best judgment seemed meet and proper to correct them, or to report the conditions to my superiors—one or the other.

In the Cutten situation of 1930 and 1931, there was nothing dangerous in the position that was being taken by Mr. Cut-
ten in any future in which he was operating in so far as
246 the reports of the commission houses showed, at least. (Tr. 641) I had no reports from Mr. Cutten as to his position.

Q. So that if any danger signal had been presented by the reports of the grain firms to you, what would have been the procedure which would have been followed by you to correct it, if it had presented a dangerous position in the market held by Mr. Cutten?

Mr. Tierney: That is objected to as purely conjecture, wholly irrelevant and immaterial.

Mr. Taylor: Oh, it goes to the practice and procedure of his department, Mr. Referee.

Referee: Objection overruled.

(Complainant excepts.)

Witness: We would have proceeded to get the facts.

Mr. Taylor: That is right. And after you had the facts and the facts developed a dangerous position, then what would you do?

Mr. Tierney: The same objection.

Referee: Objection overruled.

(Complainant excepts.)

Witness: It would have been reported to Washington on one hand, and depending upon what the situation or condition was, it might have been reported to the Business Conduct Committee.

Mr. Taylor: (Continuing) Let us assume that the position of the situation which we have in mind was a long or a short position in a given option of wheat which you considered dangerous. I am adopting your own phrase "dangerous position". (Tr. 642) If, in your judgment as the head of this department, you deemed the position of Mr. Cutten in any one option dangerous, you then would what? Would you report that to Washington?

Mr. Tierney: The same objection.

Referee: Objection overruled.

(Complainant excepts.)

247 Witness: I have answered that we would have reported it to Washington, and if it had involved lines of a certain size or something of that nature, where we were going into a delivery month or approaching it closely, we would also have reported it to the Business Conduct Committee.

At no time did I report the Cutten situation to the Business Conduct Committee. I had no reason to. There had apparently been no refusal to report, and there was no evidence of a line of 5,000,000 bushels in one future which would necessitate immediate action. And there was no evidence of a dangerous situation such as I have defined. (Tr. 643) It

does not follow that I reported this Cutten situation to Washington during this time. I am quite sure that the condition as shown by the reports was reported to Washington from time to time, occasionally. I think not by letters, except I have evidence that a report was rendered on certain accounts. I have evidence that a pencil memorandum covering certain accounts was sent in and, I may illustrate further, that frequently, when there is some of this particularly confidential information to communicate, it is not even dictated into a letter, but is written by myself in longhand as a confidential memorandum to the Washington office, so that they may know about any situation that is of particular interest. No copy is kept of that. It is built up from the records that are in the office. In the search that I made this noon, (Tr. 644) I found no evidence that a report covering accounts, speculative accounts of a certain size, had all been reported covering a certain period. (Tr. 645)

Q. Did you recommend the filing of the complaint against Mr. Cutten?

Mr. Tierney: That is objected to as wholly irrelevant
248 and immaterial, whether he did or did not, or whether his recommendation was followed or not. What difference does it make?

Referee: Objection overruled.

(Complainant excepts.)

Witness: I concurred in the recommendation with a number of the people from the office, yes, sir.

Mr. Taylor: You feel that the proceedings against Mr. Cutten are properly brought?

Mr. Tierney: Same objection.

Referee: Objection overruled.

(Complainant excepts.)

Witness: Well, I presume if they had not been properly brought some of our superiors would have checked the matter.

Mr. Taylor: How do you account for the fact that these proceedings were not brought in 1930 and 1931, for the purpose of correcting existing conditions?

Mr. Tierney: That is objected to as wholly irrelevant and immaterial.

Referee: Objection overruled.

(Complainant excepts.)

Witness: I might state that we did not know much about the details of the whole situation and how grave it was until

we began a certain check-up which (Tr. 646) led us to make a more thorough investigation and then after we began to find out what the situation was, then it was a long and involved process to prepare the complete records and check them and get a complete array of facts.

In 1930 I had enough information, regarding these Cutten accounts, to cause me to say that they constituted a serious infraction of the law, in violation of the regulation issued under the law, I account for the fact that a serious infraction of the law, known to me and known to my chiefs in Washington, was permitted to go unpunished from 1930 until 1934
249 because we didn't know of the seriousness of the infraction in 1930. (Tr. 647)

I think you will find that the testimony reveals that what we regarded as a serious infraction of the law was not simply the fact that he did not render a daily report in certain conditions during 1930. (Tr. 648) As this situation developed, with all its ramifications, it was much more serious than just a simple failure to render a report covering any one day or two days. (Tr. 649) One of the outstanding things was the failure to include reports covering certain grains and futures which were within the reporting requirements but which were not included in the reports rendered. I began to get the details of it shortly before this letter of March 15th. I say "shortly". I think I had some idea of it around the first of 1932; perhaps some time after that. I did not have the complete picture at all until some time later. (Tr. 651) The seriousness of it was that his reports, as they were being rendered, in certain instances did not include all of his holdings.

Q. I will ask you right there, Mr. Fitz, in your opinion, could two reasonable and honest minds disagree on what reports or on what accounts should be reported upon, under the regulations as adopted by your Department in 1926?

Mr. Tierney: That is objected to as calling for his incompetent opinion and conclusion. It is calling for his opinion as to what two reasonable, honest minds might do, or might not do; whether they might agree or might not agree. As a matter of law, it is entirely up to the interpretation of the Commission and not this witness.

Referee: Objection overruled.

(Complainant excepts.)

Witness: There might be a difference in the opinion
250 regarding certain types of accounts, as to whether they were reportable or not.

Mr. Taylor: Assuming that John Doe had an account in his own name, and that he opened an account in Mary Doe's name, with the same firm, and that he guaranteed Mary Doe's account, and that he gave the orders for transactions in Mary Doe's account, and assume that there was (Tr. 652) a profit from this transaction, and that that profit was paid to Mary Doe. Would you, in your interpretation of the regulations relating to reporting, classify that account as a controlled account?

A. Well, if it got down to that fine a point I would probably check that up to Washington for interpretation. I might say that in a case similar to what you illustrate, and particularly if an account is carried in the name of the wife or a sister of an individual, we have always been of the opinion that the account was controlled by the husband in that case, and I know that has been the position taken by the Board of Trade officials in considering cases of that type that have arisen in connection with reports to the Business Conduct Committee, particularly in a tight situation arising in the current month.

Now, if there were a difference of opinion with respect to the legal phases of that, it would have to be checked up with the legal authorities to decide. For administrative purposes ordinarily, and I know the Board of Trade officials have also held that that type of account was regarded as a controlled account and that the individual was responsible for it.

Q. Now, assuming that Mary Doe, in this same hypothesis that I have presented to you, gave the orders for (Tr. 653) transactions in this account. Would that in any way change your classification of this account?

A. Not necessarily.

251 Q. Would it change your classification if I were to change the hypothesis by saying that Mary Doe put up the collateral, put up the margin for this account?

A. Well, if we had a case of that kind, as I say, we would check it up with the legal authorities and render a decision. I would not attempt to decide the legal phase of it myself, because I am not capable of so doing.

Q. Did you ever write to Washington or check up with the authorities, as you define them, the question of whether any of these so-called Cutten accounts were controlled accounts?

A. Not by correspondence.

Q. Have you ever had a legal opinion that any of these accounts, or all of them are controlled accounts.

A. I never have.

Q. Do you consider them controlled accounts?

Mr. Tierney: Objected to as wholly immaterial and incompetent and calling for his legal opinion and conclusion.

Referee: Objection overruled.

(Complainant excepts.)

Witness: My detailed knowledge with respect to some of them is not complete but from what I know about (Tr. 654) some of them I would regard them as controlled accounts.

For general purposes an account may become dangerous or create a dangerous situation when it has a very large amount in it, and as testified or introduced in the record this morning, there was an agreement that if an account, a speculative account, had five million in any one future it should be reported to the Business Conduct Committee in order that they might handle the situation. Now, we might have a condition in the market where a much smaller amount would be very important in the case of a holding, either long or
252 short, in a delivery month, and in that case it might be quite important, and we frequently have issued calls for reports on much smaller amounts than a half million in that case in order to check up on the situation. In many instances those reports, or those calls for reports have been issued at the request of the Business Conduct Committee. (Tr. 655)

This is the situation with respect to the larger speculative accounts. When a large amount is in the control of a certain individual, ordinarily there is only one mind to make up and you may get a sudden, drastic market action due to the fact that that open account is suddenly closed out in large volume, regardless of whether that open interest be either long or short, and it may cause a decided upset to the market conditions and jeopardize the interests of the regular handlers of grain or the manufacturers or the exporters. (Tr. 656)

There was no exception to that agreement after it was once made, as to whether the government or an individual or anybody else was buying or selling large amounts or small amounts. The understanding of the gentlemen's agreement was that any speculative accounts having an open interest of 5,000,000 bushels in any one future was to be reported to the Business Conduct Committee at the time. (Tr. 657)

Morning Session—May 21, 1934.

I have prepared a summary of reports rendered by the commission houses covering the net position of Arthur W. Cutten as far back as 1926, similar in type and character to the summary which I have prepared and which is in evidence as "Complainant's Exhibit 402". We have prepared it under stress, but I have checked it and I believe it is correct in every particular.

Summary marked Respondent's Exhibit I. (Tr. 672)

Directing my attention to Respondent's Exhibit I, a 253 copy of which I have in my hand, and to occasions where Mr. Cutten, according to this report is indicated to have had a long or short position in excess of five million bushels in any one option, I did not in every instance where this compilation shows that Mr. Cutten's position, in any one option, was long or short wheat in excess of five million bushels, report it to the Business Conduct Committee of the Board of Trade. I feel quite sure it was, in some instances, after December 1, 1926. The position on December 14th would (Tr. 673) undoubtedly have been reported to the Business Conduct Committee, according to our practice at the time, and any date thereafter when five million were reached, not necessarily every day, but whenever the account touched the five million, that fact would have been reported to the Business Conduct Committee. It was not reported by letter or telephone. No, it would be by direct word of mouth communication. We did not even risk telephoning on a thing of that kind, and it was not conveyed in writing. It would be presented to the Business Conduct Committee at a meeting of the Committee or sometimes possibly to the Chairman. On December 16, 1926, I believe Mr. L. L. Winters was Chairman. Mr. Winters was ill part of the time and Mr. J. J. Badenoch—or J. W. Badenoch acted as Chairman in Mr. Winter's absence, so I am not positive whether Mr. Winters was present and acting as Chairman at this particular date or not.

We were receiving reports from Mr. Cutten at this time. (Tr. 676) We began receiving reports from Mr. Cutten, according to the Exhibits here, in February, 1926. (Tr. 677) Mr. Cutten continued to report from February, 1926, through to 1928. Our Department was satisfied with the manner in which Mr. Cutten was complying with our rules and regulations in the matter of reporting, from February, 1926 to

November, 1928. I do not remember that there was any-
254 thing at fault during the period. (Tr. 678) So far as we know his activities were in compliance with our regulations from February 13, 1926, to September 22, 1928, those are all the reports that he rendered during this period. They are all in now.

Mr. Taylor: If the Referee please, this article that I hold in my hand, is a true copy of an article appearing on May 6th, 1933, in the Financial Chronicle, and another article appearing on April 30, 1933. Now it reads:

"On March 7, 1933, Mr. Morganthau announced that the Grain Stabilization Corporation had disposed of all its cash wheat.— —"

Mr. Tierney: Mr. Taylor, before you read it all in, may I make an objection to that?

Mr. Taylor: Yes.

Mr. Tierney: We object to this for the reason that it is immaterial to any issue in this case. I made it very clear in my opening statement here that we do not charge Mr. Cutten with manipulating the market during this period and this evidence here would be wholly immaterial to any issue in this case.

Referee: Objection overruled.

(Complainant excepts.)

Mr. Taylor: (Reading)

"The total purchases of the Grain Stabilization Corporation, beginning in May, 1930, and continuing to March 3, 1933, amount to 370,278,449 bushels of cash wheat, and 538,337,000 bushels of wheat futures, making a total of 908,615,449 bushels. The Corporation's peak holdings of cash wheat totaled 257,136,571 bushels on June 30, 1931, no futures having been held on that date. (Tr. 683)

"On April 1, Mr. Morganthau announced that the Board's holdings of futures had been reduced to 11,911,000 bushels.

"On April 18, he announced that all May futures had been closed out, and that two days later that all July had been
255 sold. There remained a relatively small quantity of September futures, the last of which were sold on today's market."

On April 30, 1933, the Financial Chronicle says:

"When Mr. Morgenthau assumed office, the Board through the Grain Stabilization Corporation, owned about 30,300,000 bushels of wheat futures. He favored selling it at a rate which he said 'would not disturb the market', in order to

liquidate the Board's investments and to reduce the cost of the Corporation's continuance."

Now, I can produce the original papers and make proof of this if counsel requires it.

Mr. Tierney: No, we make no objection on that score.

Mr. Taylor: I understand that that is not the basis of the objection.

Mr. Tierney: Not at all.

Mr. Taylor: Therefore, I offer this in evidence and ask that it be marked RESPONDENT'S EXHIBIT J.

Mr. Tierney: Same objection.

Referee: Objection overruled; and RESPONDENT'S EXHIBIT J may be received.

(Complainant excepts.) (Tr. 684)

This letter, "Exhibit K" dated October 24, 1932, bears my signature. This is a notice to Mr. Cutten that the reporting requirements affecting his holdings were suspended. This constitutes a suspension order. This did not go to all board members. I say that for the reason that in the membership of the Board of Trade there are officials of banks and members of railroads and others, but it went to everybody that was active in the grain business, that we had been in contact with and who had been reporting to us. (Tr. 685) This suspension order, "Exhibit K" continued in effect until
256 the close of business July 20, 1933. In most instances all reports and accounts are rendered under code, either letter or number. In some cases they have written the name right on. We have asked them to discontinue that practice. And that practice was true as related to Mr. Cutten's reporting. (Tr. 686) He reported under a code number. Each commission house is assigned a code number under which they render their general report to the Grain Futures office. The commission house in turn selects its own code to be used in reporting any customer's account, the only requirement being that once that code is allotted to a certain customer it be not changed, unless for very specific reasons. These reports made by these various commission houses relating to the position of Arthur W. Cutten were reported to me under code number. Each one of them had a given number, probably a different number from Mr. Cutten. I, in turn, was familiar (Tr. 687) with that code, so when the report came through I knew that it related to that which they thought was Mr. Cutten's account. (Tr. 688)

I was in error in my previous testimony in saying, if I did,

that the instructions first sent to Mr. Cutten included the words "in any one option". (Tr. 689) In my previous testimony I said:

"The rather vital thing is the rendering of the purchase and sales statements and the putting up of the margin and the last analysis is a question of who paid the losses or received the profits, so far as accounts being under their control." (Tr. 690)

I believe that is correct, that is, those three things were considered by us in attempting to decide whether or not we believed the account was a controlled account or belonged to an individual. At least, that is so for administrative purposes. The rendition of purchase and sales statements, that is the means by which the person who has the account is
257 informed as to the various items that make up the statement and whether or not they are correct. That item standing alone would not constitute an account a controlled account because he might have had that rendered to him as an agent. He may have it sent to an agent or to his attorney in fact. We have that same situation in the case of a commission house. The P & S statements are rendered to the commission house, and they, in turn, will make up their own P & S statements to their customers. (Tr. 691)

Q. Exactly. Well, then, we come to the next factor which you mentioned in this deposition, namely, the putting up of margins, as you define it. Assume that an account were open and that the P & S report were sent to an agent, and the account was under-margined by the principal and guaranteed by a second person, and yet it was merely established that the profits from that account were paid to the person on whose name it appeared. Would the presence of the first two of what we call your factors or ingredients of your description being present and the absence of the third, namely, the payments of profits to the name of the person in whose name the account appears, change your determination of whether or not it was a controlled or non-controlled account?

Mr. Tierney: Objected to as wholly irrelevant and immaterial and not cross examination, and calling for his incompetent opinion and conclusion.

Referee: Objection overruled.

(Complainant excepts.) (Tr. 692)

Witness: In the determining of a controlled account, we would regard the account as being controlled by the persons who gave the orders or to whom the P & S's were made, or

who put up the margins, and if further examination and proof
divulged the fact that the account actually belonged to
258 someone else, nevertheless it would be controlled so far
as its market operations were concerned, by the individual who was handling these other factors. Of course, when it comes to a legal point of just exactly whose the account is, and splitting hairs, then we refer that to the legal authorities.

Mr. Taylor: All right. What I am getting at, Mr. Fitz, is this: Assume that a man opened an account in his own name, and assume that he wanted to make some money for a friend and he opened an account called the Y account; assume that he guaranteed the Y account and that he ordered certain transactions in the Y account; assume that profits from the Y account were paid to the friend, and further assume that in the matter of accounting covering inter-accounting between the friend and the commission house, the friend and the person who was guaranteeing this account, and the income tax authorities, Y's account was kept separate and distinct as the property of Y. Would that situation make the Y account, under your administrative policies, a controlled account? (Tr. 693)

Mr. Tierney: The same objection as last urged. It is not cross examination and it calls for his legal opinion.

Referee: Objection overruled.

(Complainant excepts.)

Witness: Well, for administrative purposes, when we start out, if it was reported to us as a Y account, the name and address given, we would so regard it to begin with, but it might develop as we proceeded along the line that it was evidently being directed and controlled by somebody else, and if that fact should develop, then the person who was controlling it might be called into account in connection with it. As a matter of practice, suppose we were running into a tight situation in a current delivery month on the Board of
Trade and the question of who is this Y account and who
259 is behind it and who does it belong to would be pretty
thoroughly sifted, either by us or by the Board of Trade officials, in that sort of a situation.

It would compel the getting at all the exact facts in connection with the account. (Tr. 694) So far as the reporting requirements regarding these so-called special accounts coming under Section 2, Paragraph F, in the Chicago market are concerned, the regular amount fixed in connection with that

requirement started out at one-half million bushels in any future in corn, wheat, or oats, and 200,000 bushels in rye or barley. That was July 9, 1923 when that requirement was first announced. It remained constant from 1923 to 1933, with the exception of the time it was suspended, of course. And with the further exceptions that at times we have called for smaller amounts in the current delivery future for certain special occasions. (Tr. 695)

Mr. Taylor: If your Department, in the various Cutten accounts, should, from a more detailed examination of the facts surrounding these accounts, bring yourselves to the conclusion that certain of these accounts were not controlled by Mr. Cutten, as you have interpreted them to be, such a conclusion on your part would entirely change the attitude of your department with reference to the necessity of his reporting; is that not correct?

Mr. Tierney: Just a minute. This is objected to. The question itself is improper and it is objected to for the reason that it calls upon this witness to express an opinion and conclusion not based upon the facts in evidence and also calls upon him to give a legal conclusion. It certainly is not binding upon the Government, or the complainant in this case, whatever opinion this witness may give on that subject; it is wholly irrelevant and immaterial and not cross examination.

Referee: Objection overruled, but the Referee does not understand it is asking for any legal opinion but asking for the opinion of Mr. Fitz.

260 (Complainant excepts.)

Mr. Taylor: Right. (Tr. 696)

Referee: And with that understanding the objection will be overruled.

Mr. Tierney: Opinion of what? Whether a certain set of facts amounts to a breach of the regulations?

Mr. Taylor: I am going to plead guilty that this is something like some of these questions of adding 495,000 to five and then you get 500,000.

Mr. Tierney: All right.

Witness: Well, I would say, Mr. Taylor, that if we had reason to believe at first that Mr. Cutten's or any other man's holdings was above the reporting requirements and we took it up with him—and we took up with him the necessity of reporting and he was able to satisfy us that his actual holding was only so much and that we were wrong in our assump-

tion that it was 500 or more, if we were satisfied with his explanation, I am sure we would.

Mr. Taylor: Exactly. In other words, this proceeding, as you understand it, is a rule on Mr. Cutten to show cause why he should not be deprived of his privileges of trading on the Chicago Board of Trade. Would you consider this statement of fact as a reasonable explanation, as a satisfactory showing of cause, as is required by the complaint, that as the record shows, no reports were filed by Mr. Cutten (Tr. 697) from November, 1928, until March, 1931; that from November, 1928, to July, 1929, Mr. Cutten's accounting, not only his own accounts, but such accounts as your Department have construed to be under his control and direction, was then handled by his secretary and financial man, one Mr. Finley; that Mr. Finley in July of 1929 resigned, went to Canada, and that the successor appointed in his place 261 was Miss Kellenberger; that Mr. Finley told Miss Kellenberger that no reports had been filed since November, 1928, until July, 1929, when she took office; that no reporting was required; that the fact that no reports had been made was not questioned and she did not have to report; that Miss Kellenberger taking up her duties as Secretary in July, 1929, continued in that capacity until January of 1931, and that then for the first time during her tenure of office, did she receive or did Mr. Cutten receive, during the time that she was acting as his secretary, a communication from your office, either by letter or by word of mouth, that reporting was required; and that thereupon she immediately communicated with you and made reports which I think the record indicates you at that time felt were satisfactory and sufficient. Would that statement of fact, as the question has been propounded, would you feel that (Tr. 698) those facts, if true, would constitute a reasonable explanation and a proper showing of cause as to why these reports have not been made? (Tr. 699)

Mr. Tierney: That is objected to for the reason that the question is improper. It calls for this witness' opinion and conclusion both of law and fact. The matter that they have called on this witness now to answer is a matter which will eventually be determined by the Commission based upon all the facts. It assumes facts that are contrary to the proof, and it is not proper cross examination. The witness has not shown himself competent to answer the question and it invades the province of the Commission.

Mr. Taylor: I would feel Mr. Tierney's objection is in line were it not for the fact that the witness is an official part of the Department of Agriculture and is the head of the Department here, and we are entitled to know whether or not that statement of facts, if true, would constitute a sufficient, not alibi, but a sufficient showing of facts to constitute a satisfactory explanation to the Government of the
262 complaint, which they have only on the angle of making reports.

Referee: Objection overruled.

(Complainant excepts.)

Witness: It would not, in face of the facts and information which we have.

Mr. Taylor: What are those facts and information that cause you to qualify your answer?

Mr. Tierney: The same objection.

Referee: Objection overruled.

(Complainant excepts.)

Witness: They will be presented as our case is further presented. (Tr. 700)

Mr. Taylor: You refuse to give them to me now?

A. I could only give you a general statement, and the facts will speak for themselves as they are introduced.

Q. Would you give me a general statement now?

A. That certain reports as rendered did not constitute a true report of the conditions existing at the time the reports were rendered.

Q. I don't think you understand the question, Mr. Fitz. I am discussing the explanation of the failure to report. I am not going to the question of conspiracy or manipulation of the market or false reports. I am going to the fact that neither Mr. Cutten nor his office reported at this time; whether or not these facts, if given to you, if known to you at that time, would have constituted a satisfactory explanation for his failure to report it.

Mr. Tierney: The same objection.

Referee: Objection overruled.

(Complainant excepts.)

Witness: I do not think it would have been satisfactory, because they certainly had evidence of what the requirements were and had responded from time to time, and if there
263 was any question in their minds it would have been very easy to ascertain whether or not the reports were necessary.

They had not always responded to requests when made by me for reports—not fully. (Tr. 701) As I testified the other day, I am confident that a call for report was mailed in September, 1930, but, as I stated, I do not have a carbon copy of any direct letter. The call was made in circular letter form and no copy kept. The reason I believe without doubt that a call was made at that time was that we were calling on everybody who had ever reported to us, as a check-up on the Russian situation.

Redirect Examination.

The trader who is short from six to eleven or twelve millions, is a potential buyer at a lower price if he expects to make any money. If he does not, he is not going to last very long. And if he is long in the Canadian market, and expects to make any money, he must sell at a higher price than he originally bought. So if he is long in Canada and short in the United States, he has to expect the market to go down in this country to make money and to go up in Canada to make money. If he is long in Canada he expects to sell at a higher price to make money. And if he expects to make money, to cover a short sale on the Chicago Board of Trade, he expects to buy for (Tr. 703) less than he originally sold. If he cannot do that he cannot make any money out of the transaction. In other words, if I sell six million May wheat, if I am going to make any money out of it, I have got to buy it at less than I originally sold it for. If it is a spread transaction, if the relationship between the prices in the two markets changes, it may change in his favor and the spread be closed to make a profit, or it may change against him and he make a loss on the spread. (Tr. 704)

264 From these reports I received from Mr. Cutten, in 1926, 1927, and 1928, they appeared to have been made out by one who understod how to make them. They seemed to comply with the instructions.

Q. You were asked on cross examination:

"Do you know of anything that occurred in your office, by way of letters or by way of giving this information in the Washington office that would cause you to believe that Mr. Hyde, then Secretary of Agriculture, knew that Mr. Cutten was in alleged violation of reporting requirements,"—

and you answered:

"I do not know whether there was any information reach-

ing Mr. Hyde that Mr. Cutten was not rendering daily reports. There was apparently information that reached Mr. Hyde, from what sources I do not know, with respect to market operation",

What did you have reference to when you said that?

A. I had been informed that at that time there was an exchange of telegrams between Secretary Hyde and Mr. Cutten.

Mr. Tierney: Will you mark these?

Referee: The next will be 404. (Tr. 705)

Mr. Tierney: At this time the complainant offers in evidence a duly certified copy of a telegram of date February 5, 1930, from Arthur M. Hyde, Secretary of Agriculture, to Arthur W. Cutten, as follows:

Mr. Taylor: Now, wait a minute. May I look at that?

Mr. Tierney: To Arthur W. Cutten, as follows:

Mr. Magner: May we see that before it is read, please?

Mr. Tierney: Yes. (Handing document to counsel.)

Mr. Taylor: I object to the introduction of that which purports to be a copy of a telegram from Arthur M. Hyde, Secretary of Agriculture, to Arthur Cutten, for the reason that the telegram and its substance in no way relate to the issues
265 involved in these proceedings and this hearing. (Tr. 706)

Referee: The objection is overruled and "COMPLAINANT'S EXHIBIT 404" will be received.

(Respondent excepts.)

Mr. Tierney:

"To Arthur Cutten, care of Grain Exchange, Chicago, Illinois. It is reported to us that you have been operating on the bear side of the grain market and that these (Tr. 708) operations have contributed to the collapse of the market Stop I have no right or authority to suggest any course to any business man in his own business, but just in the public interest if you could abandon such a course it would help many thousands of people in a time of distress Stop If the report is not true then disregard my anxiety in the matter. (Signed) Arthur M. Hyde, Secretary of Agriculture."

At this time the Complainant offers in evidence "EXHIBIT 405" a duly certified copy of the original telegram received by the Secretary of Agriculture, as follows (Tr. 709):

Mr. Tierney (Reading):

"Chicago, Illinois, February 25, 1930. A. M. Hyde, Secre-

tary of Agriculture, Washington. Your wire received and your information misleading. I have not been very active in the market. My activities for last two weeks consisted of selling about 400 privileges each way. I don't think I have sold a bushel of wheat during that time except to protect the trades put.

ARTHUR W. CUTTEN."

266 Mr. Tierney: Mr. Taylor, may it be agreed that the article appearing in the November 19, 1932, issue of The Saturday Evening Post, "The Story of a Speculator", by Arthur W. Cutten, was written by Mr. Cutten with Mr. Boyden Sparkes?

Mr. Taylor: No. No, we are going to object to any attempt to introduce that article in evidence.

Mr. Tierney: I hate to have to bring Mr. George Horace Lorimer over here from Boston, but he has some signed statements that I know of. Well, at this time—(Tr. 713)

Mr. Taylor: I cannot cooperate with you on that.

Mr. Tierney: At this time the complainant offers this part of an article appearing in the Saturday Evening Post under date of November 19, 1932, for the sole purpose of showing that Mr. Cutten was fully aware of the reporting requirements during the period of time he did not report in this case, as charged in this case, and during the time in which he made only gestures of reports, to wit:

Mr. Taylor: Well, now, just a minute. I want to object, Mr. Referee, and seriously, to this. My other objections have been serious but I realize the position in which the Referee has been placed here and I have simply made them for the benefit of the record that will be returned to the commission.

Now this is manifestly an attempt on the part of the Government to take certain words and phrases that appear in this article, with which we are all familiar, to instill them in this record as the words of Mr. Cutten. Now, counsel knows that any statements made in that article, which does not purport to be an article by Mr. Cutten—it is one of these articles which is an article relating to the life of a man, written by somebody that sits beside him and lets this (Tr. 714) man tell
267 him about it. But, of course, it is apparent we will have no right of cross examination. It is apparent that as far as notice is concerned, the article purports to be dated in 1932, September, 1932, and we are dealing with conditions relating to 1930 and 1931; that it has no direct or even indirect bearing upon the issues involved in this case, and is improper pro-

cedure and method of attempting to obtain the testimony of Mr. Cutten in this case, and known to be by counsel improper. It, of course, has a great publicity flare, and certain things in that article, if they go on this record, will work in line with the whole program of this proceeding, but I say that there must come a place somewhere in this proceeding where we stop in the introduction of proof of this character, and my objection in this regard is serious. I really would ask the Referee to consider it and rule upon it. (Tr. 715)

Referee: Anything further?

Mr. Tierney: "The Story of a Speculator"—

Referee: There is an objection on that. If counsel is through, the Referee will take that offer on the part of the Government under advisement and rule later on.

Mr. Tierney: I am going to read my offer into the record, whatever you rule.

Referee: The Referee had in mind, Mr. Tierney—

Mr. Tierney: I might say this, Mr. Referee. When we made an objection that we did not have the opportunity to cross examine Mr. Boylan, whose testimony before some committee was offered, the objection was considered, but it was overruled. Now, counsel for the respondent makes the same objection and I presume this Referee is consistent in his rulings. This is offered for the purpose of showing admission on the part of Mr. Cutten that he was familiar with what
268 was expected of him from the Grain Futures Administration. This does not relate to an occurrence that happened in 1926, and if the Referee will look at the story, I know there will be no hesitancy upon your part in admitting it. I do not think counsel denies that this is Arthur W. Cutten's story.

I think I could suggest something to counsel that he might withdraw the objection on that phase of it as to whether or not it is (Tr. 716) Mr. Cutten's story. We are offering it only for the purpose of showing an admission on his part that he was familiar with what was expected of him by the Grain Futures Administration.

Referee: What the Referee had in mind, Mr. Tierney, was to get a ruling on that question from authorities at Washington and he thought there was not any necessity of ruling on it at the present time, and under all the circumstances it occurred to the Referee it would be appropriate. I take it you would have no objection to that, would you?

Mr. Tierney: No, I have no objection. I am going to make my offer of this in the record and preserve my record. Whether you sustain it or overrule it, the offer is going before this Commission. I will now make my offer and if you prefer to consider it during the noon hour, we could get over that phase of it. It is not long. I am not going to read the whole article, but just one short paragraph of it.

We renew our offer at this time as follows: That part of "The Story of a Speculator", by Arthur W. Cutten, appearing in the November 19th issue of the year 1932 of The Saturday Evening Post, as follows:

"My conviction that it was vanishing came on a day in the late winter of 1926.

I was carrying a big line of wheat—bigger, I (Tr. 717) suppose than that of any other individual trading in it
269 anywhere, but in my opinion not too big. I could pay for what I had. That day the market was strong. May wheat was selling at $1.66 a bushel. I had bought most of mine when it was selling for less than $1.50. Events were justifying the judgment of conditions I had formed months before when I had taken my position. By every right of commerce I was entitled to a profit on my transactions for the risk I had taken. When I received a notice to appear before the Business Conduct Committee of the Board of Trade in the office of the directors."

Then there is a sub-title here, "Buying Too Much Wheat". "I crossed LaSalle Street and entered the creaky old elevator with its varnished interior and exposed cable running through holes in the roof and floor."

Mr. Taylor: That paragraph convinces me that Mr. Cutten never wrote that article, Mr. Tierney.

Mr. Tierney: Well, he was in the market with about four million bushels at the time.

Mr. Taylor: No, I refer to the description.

Mr. Tierney: "I spoke to acquaintances and other men I did not know recognized me. Then I entered the chamber where had assembled the Business Conduct Committee. I had known (Tr. 718) all its members for years. They were, I think, my friends. 'Look,' began the spokesman when the door had closed, 'the Grain Futures Administration has made complaint that you are carrying too much open stuff.'

It would be hard for me to make anyone other than a LaSalle Street trader understand how I felt then, unless it might

be some Russian farmer who had tasted the bitter flavor
270 of government interference in matters which should not concern it. I suppose I protested vehemently. I remember that one man there, who was one of the first friends I had gained in Chicago, put his arm across my shoulders.

'You ought to sell some wheat,' he said cajolingly, 'for the sake of the Board of Trade. You know this Committee is the device we settled upon to keep the Government from taking fuller control of the trading in futures. They get the figures and watch the acounts from day to day.'

'I know all that,' I protested, 'but is there anything criminal in an honest profit? I'm buying with and risking my own money. Why should I sell before I am ready?' "

Referee: The Referee will rule later on in connection with the article.

Mr. Taylor: The damage is done, Mr. Referee.

Mr. Tierney: That part of "The Story of a Speculator" appearing in the November 26, 1932, issue of the Saturday Evening Post, as follows, on page 36 (Tr. 719):

Mr. Taylor: The same objection that was made to the former article.

Referee: The Referee will rule later on that also.

Mr. Tierney: "Instead, however, the Government was busy with tax collecting and with a fresh drive on profits. In September, 1922, just about a year after the raid on my home, the National Government made another raid, this time on my business privacy. With the passage of the Grain Futures Act the Secretary of Agriculture was given broad powers. As a result of that Act, I may not today buy or sell a contract for the future delivery of half a million bushels of grain without having the transaction reported to the subordinate of the Secretary of Agriculture." (Tr. 720)

271 Mr. Tierney: Mr. Referee, this next witness has a great many tabulations and it will be much more convenient to him, if it is agreeable to you and counsel, to permit him to work at this table. Is it all right?

Mr. Taylor: Yes. Mr. Referee, I presume you are going to introduce Mr. Bagnell. Before we take up the testimony of this witness, there are two things I want to do:

One, first, is in connection with the introduction of the articles which have just been offered and I understand not as yet accepted.

Referee: That is correct.

Mr. Taylor: By way of further objection, and by way also

of comment, and by the way of notice, the matter of the further notice to the Government in connection with further evidence of this character that may be adduced by it, it is apparent in these articles that if written by Mr. Cutten, he was exercising that right which heretofore we have assumed a man had in this country, to comment (Tr. 721) upon Governmental activities, either by word of mouth or in the press. Whether or not this is a part of the punitive expedition, which we charge this proceedings to be against Mr. Cutten, to not only punish him by depriving him of property rights, for the doing of things of which the Government had notice several years ago and which the Government then and there, for reasons known to themselves, failed to give Mr. Cutten a cease and desist order, which is the extent of the right of the Government to meet an existing condition, we say and comment on for the record, that this is a part and parcel of the program of propaganda which is being carried on by the adminis-
272 tration in power in this country, in an attempt to restrict the freedom of speech, in an attempt to restrict the freedom of the press, in an attempt to restrict the freedom of radio.

It is perfectly apparent that Mr. Cutten, in lieu of, as would have happened in ancient days, being sent to the Star Chamber, for having made any statement against the Crown, is now, by the Government confronted with articles which he wrote, or which it is alleged he wrote—at least he must have had something to do with the preparation of these articles—and it is (Tr. 722) indicated that in those articles he spoke of the control of the Government of the business activities in which he was engaged, and now these articles are put in this record by the Government, the Government knowing that they have no relevancy whatsoever to the issues involved, but they do to the question of spreading the propaganda of the local administration in an attempt to preclude and bar a citizen of this country in the exercise of those traditional liberties which we thought that we have, in saying what we please, be it favorable or unfavorable, as long as it is constructive, in the way of comment on our own government.

I want the record to show that the respondent is in no way fooled by the strategy that is being used here to advance other angles of Government propaganda than is related to the issues involved in this hearing.

Mr. Tierney: I would like to say, as far as the statements that have been made, that as far as this humble counsel of

the Government is concerned, only portions of those articles were offered in the record, for one purpose. In the statement I made at that time I offered them, I offered them to show that Mr. Cutten had knowledge and knew what was expected of him in 1926 and that he knew how to make out the reports because he (Tr. 723) said in that article that the Grain
273 Futures Administration knew what he was doing.

Now, with all of the questions of freedom of speech, counsel and I don't disagree on that at all. I am not here in the role of a propagandist; I have a simple complaint here and it is my duty, whether it be for my Government, or for any other client, to present all the evidence that indicates or tends to prove any of the issues raised by this pleading, and I have offered this, not for any other purpose than to show that Mr. Cutten, under his own admissions, in 1926, knew what the reporting requirements were and that he knew that the Government expected a report, and that is the sole and only purpose of the testimony offered.

Mr. Taylor: Now, Mr. Referee, the record shows that Mr. Bagnell is in the local office of the Grain Futures Administration; that he has been in Chicago for the past six months, developing the audit side of the issues involved, among other things that he has been doing in connection with work for the Department. We feel that it is proper and in order that we present at this time a motion to strike certain of complainant's evidence. We shall, of course, renew our motion to strike complainant's (Tr. 724) evidence at the conclusion of complainant's case. Our reason for a dual motion of this character is this (Tr. 725):

Mr. Bagnell's testimony of necessity, from an accounting or auditing standpoint, must be based and predicated upon records and books of account that are in evidence. It follows in natural sequence that if at this time a motion to strike certain parts of the complainant's evidence should be allowed, then it would change and alter the base of the books of account on which Mr. Bagnell's testimony will be given.

It follows that should it transpire that this motion which we propose to present at this time should be by the Commission allowed, namely, that certain books of account, certain
274 records that have been admitted in evidence should by the Commission be ruled to be not a part of this record, that thereupon Mr. Bagnell would of necessity have to restrict his deductions and his testimony and his compilations and his

recapitulations to the books which the Commission would by their order have left in the record.

Now, I am not going to read out motion at length. It is a long motion. We have gone over the entire record of the case to date. We have broken down our motion into the various books of account that have been offered by the Government, by the various grain houses that have been here subpoenaed and examined. The general features of the motion are stated as follows:

"Now Comes Arthur W. Cutten, respondent herein, by (Tr. 726) Orville J. Taylor and James J. Magner, his attorneys, and respectfully represents as follows:

"A. That it has been the desire of the respondent throughout to expedite the hearing of this matter before this Referee by cooperation with the complainant in so far as that was consistent with the preservation by him of his legal rights in the premises.

"B. That in conformity with this desire the respondent has made no objection to the exhibits heretofore offered in evidence by the complainant on the grounds of genuineness, authenticity, or identification, but that he has to each of the exhibits hereinafter enumerated, and the testimony in connection therewith, reserved unto himself the right to move to strike the same upon the grounds that they are irrelevant and of no force in sustaining the allegations of the complaint herein involved, and upon any other grounds other than objections to their authenticity, genuineness, and identification.

275 "Wherefore, respondent now moves that the complainant's exhibits hereinafter enumerated and the testimony in connection therewith be stricken from the record on the grounds, general and special, hereinafter assigned, as follows: (Tr. 727)

I might read the general objections, and the special we will refrain from reading.

"1. That Complainant's Exhibits 1-403 inclusive, and the testimony in connection therewith, be stricken from the record on the following grounds:

"(a) that they and it are concerned solely with transactions occurring during the years 1930 and 1931, or years prior thereto, which are past transactions now closed and not in existence, and that said exhibits and said evidence in connection therewith do not pertain to continuing and existing con-

ditions subject to the jurisdiction of this tribunal under the authority of the Grain Futures Act, 1922.

"(b) That the sections of the Grain Futures Act, 1922, under authority of which the said exhibits and the said evidence have been placed in the record, infringe the Constitution of the United States in that they deprive the respondent of his right of trial by jury; that the said sections are in violation of the due process clause of the Constitution, and that the said sections confer upon a Commission created solely for administrative purposes powers and functions which under the Constitution are reposed in and especially reserved for the Judiciary.

276 "(c) That said exhibits and said evidence pertain to (Tr. 728) transactions which occurred three years prior to the bringing of the complaint herein involved, and that they and it are introduced in support of charges which after such lapse of time are barred under the doctrine of equitable estoppel."

Then the motion proceeds to take up each document as it is presented and state our reasons for the motion to strike.

I am perfectly agreeable, if the Referee please, and to save the Referee in any way that I can, that the motion to strike, like the motion to quash made at the commencement of these proceedings, be taken with the case by the Commission.

I propose at the close of the complainant's case to again review the testimony as may be adduced by Mr. Bagnell, to the end of including a motion to strike which will cover all of the evidence as introduced by the complainant, and at that same time such other motions will be made as we deem in order and proper for the protection of our client.

Mr. Tierney: Mr. Referee, this, as you know, is a very long motion. I have not had an opportunity to read it at this time and I should like to have an opportunity to read this and study it before proceeding on further with this witness' testimony. (Tr. 729)

Mr. Taylor: I am perfectly agreeable to that, Mr. Tierney.

Mr. Tierney: I take it, Mr. Taylor, you anticipate, which is correct, that we will introduce tabulations and schedules based upon an examination of the books and records in evidence.

Mr. Taylor: That is right.

277 Mr. Tierney: You do not propose to make any objection that those tabulations are not based on books and records in evidence, is that correct?

Mr. Taylor: My purpose in this motion, Mr. Tierney, is that those tabulations and recapitulations that Mr. Bagnell has made—

Mr. Tierney: In so far as they include related or controlled accounts, your contention is that those books, for instance, like the C. D. Robbins & Company, the M. C. and R. J. C., your contention is that those are controlled accounts or what we contend are controlled or related accounts and that they are not properly in evidence.

Mr. Taylor: That is right.

Mr. Tierney: Therefore, you would object to any tabulations based upon these?

Mr. Taylor: That is right.

Mr. Tierney: But you would not object on the ground that the tabulations are not based upon the records in evidence. Now, do you get my point? (Tr. 730)

Mr. Taylor: That is the point and that is the reason why I make this motion at this time, because if Mr. Bagnell's testimony is made on the documents in evidence to date, and at this time, when the record is returned to the Commission, if the Commission should grant certain parts of this motion—to illustrate, let us take the account of Maude Cutten with Keech, if the Commission should say the introduction of books of accounts and records in the matter of the account of Maude Cutten is highly improper and the motion of respondent that the exhibits and the evidence introduced in the Maude Cutten account be sustained, then I say that such
278 a ruling coming from the Commission would automatically take from the record the testimony of Mr. Bagnell in that his recapitulations and his compilations are going to be based on all of these accounts considered by the Government as controlled accounts. (Tr. 731)

Now, I want to be perfectly frank and perfectly fair in explaining, not the strategy—there is no strategy to it—I am just protecting the rights of my client.

Mr. Tierney: Then as I understand it, not on the ground that there is no proper foundation laid for these exhibits, on the ground that all of the books were not here—

Mr. Taylor: None whatsoever.

Mr. Tierney: For instance, we did, in some of these firms, instead of bringing all of the books—

Mr. Taylor: No objection whatsoever on that ground. (Tr. 732)

MOTION TO STRIKE CERTAIN OF COMPLAINANT'S EVIDENCE.

Now Comes Arthur W. Cutten, respondent herein, by Orville J. Taylor and James J. Magner, his attorneys, and respectfully represents as follows:

A. That it has been the desire of the respondent throughout to expedite the hearing of this matter before this Referee by cooperation with the complainant insofar as that was consistent with the preservation by him of his legal rights in the premises.

B. That in conformity with this desire the respondent has made no objections to the exhibits heretofore offered in evidence by the complainant on the grounds of genuineness, authenticity, or identification, but that he has to each of the exhibits hereinafter enumerated, and the testimony in con-
279 nection therewith, reserved unto himself the right to move to strike the same upon the grounds that they are irrelevant and of no force in sustaining the allegations of the complaint herein involved, and upon any other grounds other than objections to their authenticity, genuineness and identification.

Wherefore, respondent now moves that the complainant's exhibits hereinafter enumerated and the testimony in connection therewith be stricken from the record on the grounds, general and special, hereinafter assigned, as follows:

1. That complainant's Exhibit 1-403, inclusive, and the testimony in connection therewith, be stricken from the record on the following grounds:

(a) That they and it are concerned solely with transactions occurring during the years 1930 and 1931, or years prior thereto, which are past transactions now closed and not in existence, and that said exhibits and said evidence in connection therewith do not pertain to continuing and existing conditions subject to the jurisdiction of this tribunal under the authority of the Grain Futures Act, 1922.

(b) That the sections of the Grain Futures Act, 1922, under authority of which the said exhibits and the said evidence have been placed in the record, infringe the Constitution of the United States in that they deprive the respondent of his right of trial by jury; that the said sections are in viola-
280 tion of the due process clause of the Constitution, and that the said sections confer upon a Commission created

solely for administrative purposes powers and functions which under the Constitution are reposed in and especially reserved for the Judiciary.

(c) That said exhibits and said evidence pertain to transactions which occurred three years prior to the bringing of the complaint herein involved, and that they and it are introduced in support of charges which after such lapse of time are barred under the doctrine of equitable estoppel.

2. That complainant's Exhibits 3 and 4 (being photostatic copies of records of C. D. Robbins & Company), and all testimony in connection therewith, be stricken from the record on the following grounds:

(a) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish any conspiracy to conceal the transactions with which they are concerned from the Grain Futures Administration.

(b) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish a failure to make reports or the making of false reports to the Grain Futures Administration in connection with the transactions with which they are concerned.

(c) That they and it are not relevant to the allegations of the complaint in that said exhibits show upon their face that they are the accounts of others than the respondent
281 herein and that there has been no showing by the complainant that they were accounts owned or controlled by said respondent. That in the absence of a showing that said exhibits relate to accounts owned or controlled by the respondent herein, said exhibits and the testimony in connection therewith are confidential and privileged under Section 4 of the Rules and Regulations with respect to contract markets promulgated by the Secretary of Agriculture under said Grain Futures Act, 1922.

(d) That in the absence of a showing that said exhibits relate to accounts owned or controlled by the respondent or a showing of consent, they are confidential and privileged under Section 4 of the Rules and Regulations with respect to contract markets promulgated by the Secretary of Agriculture under said Grain Futures Act, 1922.

3. That Complainant's Exhibits 5, 6, 7, 8, and 9 (being "street books" of Uhlmann & Company), Exhibit 10 (being the grain ledger of said company), and the testimony in connection therewith, insofar as they and it are concerned with Account 57 Special A, and Exhibit 12 (being one sheet of the

financial ledger of said company relating to said account), and the testimony in connection therewith, be stricken from the record on the following grounds:

(a) That they are not relevant to the allegations of the complaint in that they neither establish or tend to establish a conspiracy to conceal from the Grain Futures Administration the transactions with which they are concerned.

282 (b) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish a failure to report or the making of false reports to the Grain Futures Administration.

(c) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish that said Account 57 Special A was owned or controlled by the respondent herein.

(d) That in the absence of a showing that said account was owned or controlled by the respondent herein, or a showing of consent, said exhibits, insofar as they relate to said account, are confidential and privileged under Section 4 of the Rules and Regulations with respect to contract markets promulgated by the Secretary of Agriculture under the Grain Futures Act, 1922.

4. That complainant's Exhibits 5, 6, 7, 8, 9, and 10 (as above described), and the testimony in connection therewith, insofar as they and it are concerned with Account 57 Special, and Exhibit 11 (being five sheets of the financial ledger of Uhlmann & Company relating to Account No. 57 Special,) and the testimony in connection therewith, be stricken from the record on the following grounds:

(a) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish a conspiracy to conceal from the Grain Futures Administration the transactions with which they are concerned.

283 (b) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish a failure to report or the making of false reports to the Grain Futures Administration.

5. That complainant's Exhibit 14 (being a letter to the Grain Futures Administration, of Chicago, identifying certain accounts carried with the Uhlmann Grain Company) be stricken from the record because the testimony in connection therewith establishes the fact that it was executed by one having no knowledge of the matters therein referred to apart

from that gained from the books and records introduced in evidence by the complainant.

6. That complainant's Exhibits 19, 21, 22, and 22-A (being the "street books" of Keech & Company), and the testimony in connection therewith, be stricken from the record on the ground that they and it are not relevant to the allegations of the complaint in that they are concerned with transactions in corn futures and that there are no allegations as to such futures in the said complaint.

7. That complainant's Exhibits 16, 17, 18, 19, 19-A-19-M, inclusive, and 20 (being the "street books" of Keech & Company), and the testimony in connection therewith, insofar as they and it relate to accounts L, E. M. L. Cutten, 97, R. J. Cutten, Maude Cutten, and Exhibits 24, 25, 26, 27, and 28 (being the financial ledger sheets of said company relating to accounts L, E. M. L. Cutten, 97, R. J. Cutten and Maude Cutten, respectively) and Exhibits 29, 30, 31, 32, and 33 (being grain ledger sheets of said company relating to accounts 97, L, R. J. Cutten, Maude Cutten and E. M. L. Cutten, respectively), Exhibits 35, 36, 37, 38, 39, and 40 (being letters 284 to said company guaranteeing accounts L, R. J. Cutten, Maude Cutten and E. M. L. Cutten, respectively), and Exhibit 41 (being a letter to said company directing transfer of profits of Maude Cutten account to A. W. C. account), and the testimony in connection therewith, be stricken from the record on the following grounds:

(a) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish a conspiracy to conceal from the Grain Futures Administration the transactions with which they are concerned.

(b) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish a failure to report or the making of false reports to the Grain Futures Administration.

(c) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish that said accounts were owned or controlled by the respondent herein.

(d) That in the absence of a showing that said accounts were owned or controlled by the respondent herein or a showing of consent, said exhibits and the testimony in connection therewith, insofar as they and it relate to said accounts, are confidential and privileged under Section 4 of the Rules and Regulations with respect to contract markets promulgated

by the Secretary of Agriculture under the Grain Futures Act, 1922.

285 8. That complainant's Exhibits 16, 17, 18, 19, 19-A-19-M, inclusive, and 20 (as above described), and the testimony in connection therewith, insofar as they and it relate to the account of Arthur W. Cutten, and Exhibit 23 (being four sheets of the financial ledger of said company relating to the account of Arthur W. Cutten), and Exhibit 34 (being five sheets of the grain ledger of said company relating to the account of Arthur W. Cutten) and the testimony in connection therewith, be stricken from the record on the following grounds:

(a) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish a conspiracy to conceal from the Grain Futures Administration the transactions with which they are concerned.

(b) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish a failure to report or the making of false reports to the Grain Futures Administration.

9. That complainant's Exhibits 42, 43, 44, 45, 46, 47, 48, 49, 50 (being the "street books" of Bartlett Frazier & Company), 51 (being the grain ledger of said company) 52, 53 and 54, and the testimony in connection therewith, insofar as they relate to Accounts D.S., Maude Cutten and Mrs. No. 7, and Exhibits 55 and 56 (being letters to said company guaranteeing accounts Maude Cutten and D. S., respectively), and the testimony in connection therewith, be stricken from the record on the following grounds:

286 (a) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish a conspiracy to conceal from the Grain Futures Administration the transactions with which they are concerned.

(b) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish a failure to report or the making of false reports to the Grain Futures Administration.

(c) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish that said accounts were owned or controlled by the respondent herein.

(d) That in the absence of a showing that said accounts were owned or controlled by the respondent herein or a show-

ing of consent, said exhibits and the testimony in connection therewith, insofar as they and it relate to said accounts, are confidential and privileged under Section 4 of the Rules and Regulations with respect to contract markets promulgated by the Secretary of Agriculture under the Grain Futures Act, 1922.

10. That complainant's Exhibits 42-54, inclusive (as above described), and the testimony in connection therewith, insofar as they or it relate to accounts No. 20 and No. 7, be stricken from the record on the following grounds:

(a) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish a conspiracy to conceal from the Grain Futures
287 Administration the transactions with which they are concerned.

(b) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish a failure to report or the making of false reports to the Grain Futures Administration.

11. That complainant's Exhibits 59 (being the grain ledger of Kidston & Company re account 59) and 60 (being financial ledger sheet of said company re Account 59) and the testimony in connection therewith, and Exhibit 61 (being a page of the "street book" of said company) and 62 (being a letter to said company guaranteeing Account 59), and the testimony in connection therewith, insofar as they and it relate to account No. 59, be stricken from the record on the following grounds:

(a) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish a conspiracy to conceal from the Grain Futures Administration the transactions with which they are concerned.

(b) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish a failure to report or the making of false reports to the Grain Futures Administration.

(c) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish that said Account 59 was owned or controlled by the respondent herein.

288 (d) That in the absence of a showing that said Account 59 was owned or controlled by the respondent herein, or a showing of consent, said exhibits and the testimony in connection therewith, insofar as they and it relate to said

Account 59, are confidential and privileged under Section 4 of the Rules and Regulations with respect to contract markets promulgated by the Secretary of Agriculture under the Grain Futures Act, 1922.

12. That complainant's Exhibits 57 (being six pages of the grain ledger of Kidston & Company re Account No. 8), 58 (being seven pages of the financial ledger of said company re Account No. 8), and 61 (as above described), and the testimony in connection therewith, insofar as they and it relate to Account No. 8, be stricken from the record on the following grounds:

(a) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish a conspiracy to conceal from the Grain Futures Administration the transactions with which they are concerned.

(b) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish a failure to report or the making of false reports to the Grain Futures Administration.

13. That complainant's Exhibits 63 (being the "street book" of Jackson Brothers, Boesel & Company) and 64 (being the grain ledger of said company) and the testimony in connection therewith, insofar as they and it relate to accounts L. F. C., and R. Cutten and Exhibits 71 and 72 (being 289 financial ledger sheets of said company re accounts L. F. C. and R. Cutten respectively), and the testimony in connection therewith, be stricken from the record on the following grounds:

(a) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish a conspiracy to conceal from the Grain Futures Administration the transactions with which they are concerned.

(b) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish a failure to report or the making of false reports to the Grain Futures Administration.

(c) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish that said accounts were owned or controlled by the respondent herein.

(d) That in the absence of a showing that said accounts were owned or controlled by the respondent herein or a showing of consent, said exhibits and the testimony in connection therewith, insofar as they and it relate to said accounts, are

confidential and privileged under Section 4 of the Rules and Regulations with respect to contract markets promulgated by the Secretary of Agriculture under the Grain Futures Act, 1922.

14. That complainant's Exhibits 63 and 64 (as above described), and the testimony in connection therewith, insofar as they and it relate to Accounts 40, 209-C, C-209 Special,
290 C-210, C-211 and C-212, and Exhibits 65, 66, 67, 68, 69 and 70 (being financial ledger sheets of Jackson Brothers, Boesel & Company re Accounts 40, C-209, C-209 Special, C-210, C-211 and C-212, Respectively), and the testimony in connection therewith, be stricken from the record on the following grounds:

(a) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish a conspiracy to conceal from the Grain Futures Administration the transactions with which they are concerned.

(b) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish a failure to report or the making of false reports to the Grain Futures Administration.

15. That complainant's Exhibits 73 (being an identification of the ownership of Accounts, 40, C-209, C-209 Special, C-210, C-211, C-212, L. F. C., and R. Cutten, as carried with Jackson Brothers, Boesel & Company) and 74 (being an identification of Accounts A. W. C., C. W. A., 209, 785, S Special, R. J. C., Maude Cutten, Paul C. Bloomer and 787), and the testimony in connection therewith, be stricken from the record on the ground that there has been no showing that the documents constituting said exhibits were executed by persons having knowledge with respect to the matters therein referred to other than that gained from the books and records introduced in evidence by the complainant.

16. That complainant's Exhibits 75, 76, and 77 (being "street books" of Clement, Curtis & Company) and the testimony in connection therewith, insofar as they and it
291 refer to accounts Maude Cutten, R. J. C., S. Special, 785, 209, C. W. A., Paul C. Bloomer and 787, and Exhibits 81, 83, 85, 87, 89, 91 (being grain ledger sheets of said company re accounts Maude Cutten, R. J. C., S. Special, 785, 209 and C. W. A., respectively), and Exhibits 82, 84, 86, 88, 90 and 92 (being financial ledger sheets of said company re accounts Maude Cutten, R. J. C., S. Special, 785, 209 and C. W. A.,

respectively), and the testimony in connection therewith, be stricken from the record on the following grounds:

(a) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish a conspiracy to conceal from the Grain Futures Administration the transactions with which they are concerned.

(b) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish a failure to report or the making of false reports to the Grain Futures Administration.

(c) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish that said accounts were owned or controlled by the respondent herein.

(d) That in the absence of a showing that said accounts were owned or controlled by the respondent herein or a showing of consent, said exhibits and the testimony in connection therewith, insofar as they and it relate to said accounts, are confidential and privileged under Section 4 of the Rules and Regulations with respect to contract markets promul-
292 gated by the Secretary of Agriculture under the Grain Futures Act, 1922.

17. That complainant's Exhibits 75, 76 and 77 (as above described), and the testimony in connection therewith, insofar as they and it refer to the account of Arthur W. Cutten and Exhibit 93 (being sheets of the grain ledger of Clement Curtis & Company re account of Arthur W. Cutten), and Exhibit 94 (being sheets of the financial ledger of said company re account of Arthur W. Cutten), and the testimony in connection therewith, be stricken from the record on the following grounds:

(a) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish a conspiracy to conceal from the Grain Futures Administration the transactions with which they are concerned.

(b) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish a failure to report or the making of false reports to the Grain Futures Administration.

18. That complainant's Exhibits 95 (being "street book" of William J. Springer), 96 (being the financial ledger of William J. Springer) and 97 (being an identification of accounts carried with William J. Springer), and the testimony in con-

nection therewith, insofar as they and it relate to Account No. 20, be stricken from the record on the following grounds:

293 (a) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish a conspiracy to conceal from the Grain Futures Administration the transactions with which they are concerned.

(b) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish a failure to report or the making of false reports to the Grain Futures Administration.

(c) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish that said Account No. 20 was owned or controlled by the respondent herein.

(d) That in the absence of a showing that said account No. 20 was owned or controlled by the respondent herein or a showing of consent, said exhibits and the testimony in connection therewith, insofar as they and it relate to said Account No. 20, are confidential and privileged under Section 4 of the Rules and Regulations with respect to contract markets promulgated by the Secretary of Agriculture under the Grain Futures Act, 1922.

19. That complainant's Exhibits 95, 96 and 97, (as above described) and the testimony in connection therewith, insofar as they and it relate to Account No. 30, be stricken from the record on the following grounds:

294 (a) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish a conspiracy to conceal from the Grain Futures Administration the transactions with which they are concerned.

(b) That they and it are not relevant to the allegations of the complaint in that they neither establish or tend to establish a failure to report or the making of false reports to the Grain Futures Administration.

20. That complainant's Exhibits 99-357, inclusive, (being reports to the Grain Futures Administration during the years 1926, 1927, and 1928 and letters with respect to said reports) and the testimony in connection therewith, be stricken from the record on the following grounds:

(a) That they and it are not relevant to the allegations of the complaint in that they are concerned solely with transactions which are closed and not in existence at the present

time, and, therefore, are not transactions upon which evidence is admissible under the provisions of the Grain Futures Act, 1922.

(b) That they and it are not relevant to the allegations of the complaint in that said allegations concern themselves solely with transactions occurring during years 1930 and 1931, and that none of the transactions to which said exhibits refer, occurred in such years or continued in existence in such years.

295 (c) That they are not relevant to the allegations of the complaint in that they neither establish or tend to establish a conspiracy to conceal transactions occurring during the years 1930 and 1931 from the Grain Futures Administration, as in said complaint alleged.

(d) That they are not relevant to the allegations in the complaint in that they neither establish or tend to establish a failure to report or the making of false reports during the years 1930 and 1931, as in the said complaint alleged.

(e) That in the absence of a showing that they are relevant to the allegations of the complaint herein involved, said exhibits are privileged and confidential under section 4 of the Rules and Regulations with respect to contract markets promulgated by the Secretary of Agriculture under the Grain Futures Act, 1922.

21. That complainant's Exhibits 358-403, inclusive, and the testimony in connection therewith, be stricken from the record on the ground that they and it are not relevant to the allegations in the complaint in that they neither establish or tend to establish any of the allegations contained in said complaint.

Mr. Tierney: Before adjournment we had a motion submitted. It was suggested by Mr. Taylor that the motion go; I have nothing to say except that we resist the motion. That is all.

Referee: This is a motion to strike certain of complainant's evidence, consisting of nineteen pages. The Referee has gone over this and denies the motion in toto.

296 This morning Government counsel offered in evidence two articles, as the Referee understands it, one in the November 19, 1932 issue of the Saturday Evening Post, and the other one of November 26, 1932. The Referee is going to sustain the objection made by respondent's counsel and deny the offer of proof later made by complainant's counsel.

(Complainant excepts.) (Tr. 735)

D. B. BAGNELL, called as a witness, duly sworn, testified as follows:

My name is D. B. Bagnell. I live in Lombard, a suburb of Chicago. (Tr. 735) I am an accountant employed by the Grain Futures Administration of the United States Department of Agriculture. I have been so employed something over three years. I have been located in Chicago since last October or September, about eight months. Prior to that I was located at Omaha, Nebraska. I was in charge of the Omaha office of the Grain Futures Administration. My duties in connection with that position were receiving reports and compiling statistics relating to grain trading on the Omaha grain exchange, and handling any accounting or auditing assignments that arose in that section of the country. I am a certified public accountant. I went to school at Chamberlain Hunt Academy, Port Gibson, Mississippi, Soule Business College, New Orleans, and the University of Alabama. I was admitted as a certified public accountant under the examination of the American Institute of Accountants given by the State of Alabama. I am familiar with the system of accounting peculiar to transactions on grain exchanges. I examined the books and records in evidence here of the Bartlett-Frazier Company, of Clement Curtis & Company,
297 Jackson Brothers Boesel & Company, F. B. Keech & Company, James Kidston & Company, William J. Springer, Uhlmann Grain Company and C. D. Robbins & Company. (Tr. 736 and 737)

In connection with my examination of the books and records of these various companies, I called upon various of the firms to identify certain accounts appearing in their books and records. I caused Exhibit 14 to be prepared and presented to the Uhlmann Grain Company. (Tr. 738) It was signed in my presence.

Mr. Tierney: At this time the Complainant offers in evidence EXHIBIT 14, identifying the account 57 Special and 57-A Special in the Uhlmann Grain Company.

The Referee: Wait a minute. Is there an objection?

Mr. Taylor: No.

The Referee: COMPLAINANT'S EXHIBIT 14 may be received.

I called upon Bartlett-Frazier & Company to identify certain accounts appearing upon their books and records. I

prepared Exhibit 42-A all except the names and addresses and signatures that are filled in. They were filled in by Mr. Wade, Secretary of Bartlett-Frazier & Company, (Tr. 739), who signed it in my presence.

Mr. Tierney: We offer at this time COMPLAINANT'S EXHIBIT 42-A.

The Referee: It is the Referee's recollection that that was received. However, if there is any question about it—

Mr. Tierney: I am not sure about that so I will make the offer at this time, anyway.

The Referee: Assuming that it was not received, is there an objection?

Mr. Taylor: We have had this general objection that
298 I think might be repeated, in the light of the fact that this testimony of Mr. Bagnell will go mostly to the book; namely, that we make no objection to any of the records or books of accounting that have been introduced or that may be introduced, on the grounds of identification or of authenticity. We reserve any other legal grounds of objections that may occur to us, unless counsel wants us to take up time to make them as we go along, we, of course, reserve a general objection, which I understand it is stipulated, as to relevancy. We reserve an objection to the fact that the records and documents as are here being considered, relate to the confidential and privileged communications of various customers. We find that the Government has seen fit to avail itself of the protection of that clause of the Act according privilege and protection to confidential communications, and we will want that reservation. Now, if we can simply carry through into our motion to strike general objections other than objections to authenticity and identification, why I will permit the examination to go right ahead without any—

Mr. Tierney: As I understand it, your general objection was to the relevancy of this documentary evidence?

Mr. Taylor: That is right; and now as to the confidential and privileged communication character of it.

Mr. Tierney: You are making the same grounds that was included—

Mr. Taylor: Yes, that will stand as an objection to all of these books or all of these offers.

Mr. Tierney: Now, let us get the last thing I had to say on what Mr. Taylor had to say. Will you read it, please?

The Referee: Objection overruled and COMPLAINANT'S EXHIBIT 42-A will be received. (Tr. 740 and 741)

299 Mr. Taylor: We won't ask for a specific ruling in each case from now on, Mr. Referee, if it is agreeable to counsel.

Mr. Tierney: You won't ask for it?

Mr. Taylor: We won't make a specific objection and have a specific ruling unless you want us to. It seems to me it will save a lot of time.

Mr. Tierney: I want to save a lot of time, but I want to have some understanding as to what the objection is, so that it is clear in this record.

As I understand it, your objection is first, to the relevancy of these documents, and, second, that the evidence is not competent because it is the divulging of confidential—

Mr. Taylor: Privileged communications.

Mr. Tierney: Privileged communications.

In the course of my investigation of this case, I called upon Jackson Brothers Boesel & Company to furnish an identification of accounts carried upon their books. I got that identification from Mr. Russel Stern, whom I understood to be a partner in the firm. Mr. Russel Stern signed this document, Exhibit 73, in my presence and at my request. The form part of that exhibit was prepared under my direction. The names and numbers and signatures appearing in there were placed there by Jackson Brothers Boesel & Company; Mr. Stern had that done by a stenographer in his office.

Mr. Tierney: If we have not offered 73, we now offer it.

The Referee: It will be received.

300 I called upon Clement Curtis & Company to identify certain accounts on their books. Exhibit 74 is an identification procured by me from Clement Curtis & Company. That was signed by Mr. Joseph Kessler in my presence. It was presented to him and by him returned to me. At the time it was presented to him the code identifications, or rather, the words and numbers under the word "Code" were filled in. The names and addresses were not. When it was returned to me, it was in the form that it is now.

Mr. Tierney: I am not sure as to whether 74 has been offered before, but if it has not, we offer it at this time.

The Referee: COMPLAINANT'S EXHIBIT 74 will be received in evidence.

Exhibit 406 is an identification signed by Mr. Rigg, formerly of F. B. Keech & Company, giving the same information as those just discussed. I called upon Mr. Rigg to identify the A. W. C., the M. C., the E. M. L. C., the L., No.

97 and R. J. C. accounts with that company. Mr. Rigg signed this in my presence. He had the names and addresses of those alleged to be owners of those accounts put in by his stenographer. (Tr. 743, 744 and 745)

Mr. Tierney: We offer at this time EXHIBIT 406, identification of the Cutten accounts with F. B. Keech & Company.

The Referee: COMPLAINANT'S EXHIBIT 406 will be received.

Based upon my examination of the books and records of the commission firms—and when I say commission firms, I refer to Bartlett-Frazier & Company, Clement Curtis & Company, Jackson Brothers Boesel & Company, F. B. Keech & Company, James Kidston & Company, William J. Springer,
and the Uhlmann Grain Company—which are in evidence
301 here, I prepared a tabulation and analysis of the wheat
futures transactions of Arthur W. Cutten with the various firms by days, by commission houses, by accounts and by futures, in the accounts identified by the grain firms as those of Arthur W. Cutten. Complainant's Exhibit 407 is an analysis of the Chicago wheat futures transactions and open commitments handled through Accounts No. 7 and No. 20 on the records of Bartlett-Frazier & Company, No. 209-C, No. 785, A. W. C., C. W. A., and S. Special on the books of Clement Curtis & Company; No. 40, No. 209-C, No. 209-C Special, No. 210-C and L. F. C. on the books of Jackson Brothers Boesel & Company; A. W. C. and L. on the books of F. B. Keech & Company; No. 8 on the books of James Kidston & Company; No. 20 and No. 30 on the books of William J. Springer; and No. 57 Special on the books of the Uhlmann Grain Company. (Tr. 746 and 747)

The facts and figures contained in Exhibit 407 correctly show the transactions appearing in the books and records of the various firms which are in evidence here.

Mr. Tierney: We offer in evidence COMPLAINANT'S EXHIBIT 407, identified by the witness.

The Referee: Let EXHIBIT 407 be received.

I prepared, based upon the books and records in evidence, a summary of the wheat futures accounts belonging to Arthur W. Cutten, as identified by the various firms, for the years 1930 and 1931. Exhibit 408 is such a summary and compilation. That is a summary of the figures in Exhibit 407, just discussed.

Mr. Tierney: We offer in evidence EXHIBIT 408.

The Referee: It will be received.

302 Based upon the books and records in evidence, and from my examination of the same, I prepared an analysis of the accounts and open commitments, by days, by commission house, and by futures, in accounts carried with commission firms, those whose books are in evidence, with respect to accounts of others, but related to the Arthur W. Cutten accounts. Exhibit 409 is a detailed analysis, by days, by accounts, by commission house and by futures of the Chicago Wheat futures transactions in the following accounts: M. C., D. S. and Mrs. No. 7, on the records of Bartlett-Frazier & Company. M. C. and R. C. on the records of Clement, Curtis & Company. Number 211-C and R. C. on the Records of Jackson Bros., Boesel & Company. Number 97, R. J. C., E. M. L. C. and M. C. on the records of F. B. Keech & Company. H. C. and R. J. C. on the records of C. D. Robbins & Company and 57-A Special on the records of the Uhlmann Grain Company. Exhibit 409 correctly reflects what appears in the books and records of the commission houses in which these accounts appear.

Mr. Taylor: I want to offer a special objection to the—is that 408, Mr. Tierney? Have you offered it as yet?

Mr. Tierney: I just offered 409, yes; that is this one on the related and controlled accounts.

Mr. Taylor: Yes. On the ground that these books, on their face, appear to be accounts of other persons than Arthur W. Cutten; that they are accounts that seemingly may be under the quasi-direction of Mr. Cutten in that some of them are in his care, but that on the grounds of confidential and privileged communication, the offer of these books and the acceptance of these books is highly improper and therefore objected to.

303 The Referee: Objection overruled. COMPLAINANT'S EXHIBIT 409 will be received.

(Respondent excepts.) (Tr. 748, 749, 750 and 751)

Exhibit 410 is a summary of the accounts which I analyzed in Exhibit 409, which I have just described.

Mr. Tierney: Complainant offers in evidence EXHIBIT 410.

Mr. Taylor: The same objection.

The Referee: Objection overruled. It will be received.

(Respondent excepts.)

I prepared a combined summary of Exhibits 407 and 408. Exhibit 411 is a summary of all of the exhibits which have

just been described in both of the preceding exhibits, that is, 407 and 409.

Mr. Tierney: We offer in evidence EXHIBIT 411, identified by the witness.

Mr. Taylor: Let me ask him a question here, that will probably save time.

The Referee: It will be received.

Mr. Tierney: Did you want to make an objection?

Mr. Taylor: No, I do not. I want to ask a question. Just to save time, Mr. Referee, I have asked Mr. Tierney's permission to ask one question, as to whether or not this compilation in evidence as Exhibit 411 is a compilation of all of the accounts in all of the brokerage houses that you enumerated. Is it a consolidation of all?

A. This exhibit here?

Q. Yes.

A. Yes, that is a compilation, a composite of all of the accounts.

304 Q. Of everything?

A. Yes.

Mr. Taylor: That is all.

In the Exhibit 407 the accounts are first arranged by futures. On the first page of this exhibit we have the 1930 May wheat futures. Each page in the exhibit refers to a month. For instance, the first page in the exhibit refers to the 1930 May wheat for the month of January, 1930. In each series of four columns on the page we analyze an account. The first four columns on the left of page 1 refer to account No. 20, carried on the books of the Bartlett-Frazier Co. The first of these four columns shows all purchases of the 1930 May wheat futures; the second shows the sales; the third shows the resulting long position; the fourth shows the resulting short position. Each line on the page refers to a day. The first line of this particular page refers to January 1, 1930. No figures appear on that line. Dropping down to line No. 10, which refers to the 10th day of January, 1930, the figures "400" under the "Sold" column, Clement Curtis & Company, account A. W. C., indicates that 400,000 bushels of 1930 May wheat were sold for this account on the 10th of January, 1930. Two columns over, under the column headed, "Short," you see the 400 repeated. That indicates that the account acquired a short position of 400,000. This 400 is carried on down for the next five days, the next four trading days and one holiday, which brings us to the 15th

day of January. On that day appears a purchase of 200,000, which applied to the previous short position of 400, leaves a short position of 200. All of these various accounts are then totaled over on the right hand side of the sheet under the
305 column headed "Grand Total" to show the total transactions and open commitments by days in this future for this particular month. Exactly the same principle applied throughout the whole book. We take up the 1930 July wheat next, then the 1930 September wheat, 1930 December wheat, 1931 May wheat, and so on, until we end up with the 1932 May wheat in December, 1931, the last item. The accounts with Clement Curtis & Company included in my tabulation Exhibit 407 are those identified by Exhibit 74. (Tr. 752, 753, 754 and 755)

The account on the first page of that sheet is one that was carried under the name of Arthur W. Cutten, and, therefore, is not included in this Exhibit (74). It is not included on Plaintiff's Exhibit No. 407. The records show that as being Arthur W. Cutten's, so it was unnecessary to call for the Code identification. All of the tabulations in 407 and all of these exhibits that have just now been identified by me, 407 to 411, both inclusive, are based upon the books and records in evidence here of the various grain firms. From this tabulation, Exhibit 407, I can determine, by days, the trades that were made for these accounts that are included here. I can determine and it is shown in these tabulations the total long or short position by accounts, and by futures, at the end of every trading day during the two-year period. The accounts I have included in Exhibit 407 are those accounts that have been identified by the firms and carried upon their books as accounts of Arthur W. Cutten. (Tr. 756). The difference between Exhibit 408, labeled "Wheat futures account of Arthur W. Cutten, 1930 and 1931," and Exhibit 407 is that
in 408 the accounts are not shown in detail. In this ex-
306 hibit is only shown the total of May wheat, July wheat, September wheat, December wheat, and March wheat, in which he had transactions for every day. It is analyzed by days, just as it is in here, except it was impossible to look at this Exhibit and tell what firms or what accounts it was through. This is simply a further breakdown—the Exhibit 407 is a further breakdown of the figures appearing in Exhibit 408.

Mr. Taylor: Just let us get clear on that. I want to know if I can ask the witness as to whether or not the totals ap-

pearing on the righthand side of this summary are a total of all options?

A. All options.

Q. In the year?

A. All options that had any transactions or open commitments on the day represented there.

In other words, these totals are the total of the four options held. These totals are all of these columns brought over here. The item of 610, appearing short in the total column on January 27, 1930, consists of 410 May wheat short and 200 July wheat short. The first column to the left on Exhibit 408 is the day on which the transactions and open commitments occurred or existed. On this first page of Exhibit 408, the word "May" refers to the May wheat future; whatever May wheat future happened to be alive at that particular time. "July" referred to the July wheat future; "September" to the September wheat future and "December" to the December wheat future. This Exhibit 408 shows the total bought and sold in any one future on any one day. (Tr. 757 and 758) But it does not show the commission house or the firms through which the transactions were had. And that is true of all futures. And over here in the last two col-
307 umns, under long and short, is shown on the total open commitments on any day, long or short, of the accounts that were identified as being those of Mr. Cutten.

An explanation of Exhibit 409 would simply be a repetition of the explanation of Exhibit 407, except that it refers to a different set of accounts. These refer to accounts that were identified and kept by the commission houses as being those of relatives or associates of Mr. Cutten. I have prepared a composite of what appears in Exhibit 409. That is Exhibit 410. (Tr. 759) Exhibits 410 and 408 are similar exhibits. They show exactly the same type of information for two different sets of accounts. In other words, Exhibits 407 and 408 go together, and 409 and 410 go together, and Exhibit 411 is a composite of what appears in 407 and 409, and the same things that are shown as to days of trade, the futures involved, the bought and sold in each future, and the total long and short positions are shown on Exhibit 410 in exactly the same manner as in Exhibit 408. (Tr. 760) That is true likewise with respect to Exhibit 411. And all of these exhibits correctly show what appears in, and each is based on; the books and records of the commission firms, in evidence.

Exhibit 407 shows July wheat net short 1,540,000 bushels on January 5, 1931, in accounts as follows:

Account No. 20 with Bartlett-Frazier & Company 100,000 short; Account A. W. C. with Clement Curtis & Company, 600,000 short; Account No. 40 with Jackson Brothers Boesel & Company, 175,000 short; Account No. 209-C with Jackson Brothers Boesel & Company 40,000 short; Account A. W. C. with F. B. Keech & Company, 200,000 short; Account 8, with James Kidston & Company, 70,000 long; Account 57 Special, with the Uhlmann Grain Company, 495,000 short.

308 (Tr. 761) That is a total of 1,610,000 short and 70,000 long, or 1,540,000 net short.

Complainant's Exhibit 359 shows there was a total of 600,000 July wheat short reported under date of January 5, 1931, by Mr. Cutten. This was all with Clement Curtis & Company, according to the report. That was all the wheat that was reported. Exhibit 411, which includes accounts other than those definitely identified as those of Mr. Cutten, those of relatives and associates, shows a net short position of 2,035,000 bushels July wheat January 5, 1931. In addition to those accounts I have already enumerated, the additional short interest consisted of 495,000 in the account 57 Special A, in the Uhlmann Grain Company. I examined the records of the Uhlmann Grain Company to ascertain if there was any transfer of any profits from the 57 A account to the 57 account, or vice versa. (Tr. 762) I found that all the profits from the 57 Special A account eventually found their way into the 57 Special account by ledger transfer. On July 15, 1931, there was a transfer of $32,152.31 in profit from the 57 Special A account to the 57 Special Account. On December 8, 1933, there was a transfer of $1,723.35 loss from the 57 Special A account to the 57 Special account.

In July wheat on December 11, 1930, the street book showed a sale of 200,000 July wheat for Account 57 Special, but I was unable to find the whole quantity on the grain ledger. I finally found 190,000 in 57 Special account and 10,000 in the 57A Special. That, I believe was the first time that the 57A Special had appeared on the records. (Tr. 763) The transfer of profits from 57A Special to 57 Special and the fact that purchases or sales were frequently divided

309 between the accounts and that each of these divisions seemed to have the same effect, which was to prevent either account from getting over 495,000 bushels, were significant to me, indicating that they were one and the same.

On December 22, 1930, Accounts 57 A Special and 57 Special were both short 495,000 bushels of July wheat. Both accounts remained 495,000 short until January 13, 1931, and on January 14, 1931, 57A Special account had a purchase of 305,000 bushels, which reduced its short position to 190,000. 57 Special account had a purchase of 495,000 on January 14, 1931 which balanced it entirely as far as July wheat was concerned. The street book showed a purchase on that day of 800 for 57 Special, 495 of which went into 57 Special and 305 to 57 A. The street book showed it all for one account. (Tr. 764 and 764A) On January 16, 1931, 205,000 bushels was entered as a sale in the 57-A account, bringing it up to 395,000, while 495,000 bushels was entered as a sale in 57-Special account giving it a short position of 495,000 bushels. 57 Special account remained at 495 short from January 18, 1931 through February 2, 1931. The sale of 205,000 on January 16, gave 57A special a short position of 395,000. It continued to carry that short position through February 9, 1931. (Tr. 765)

In 57 Special account 395,000 was purchased on February 3rd, which represented a close out of 395,000; reducing the account to 100,000 short. That was carried until February 7th, on which day 100,000 more was sold, giving it 200,000 short, and then this 200,000 was bought in on February 10th, balancing the account for awhile. Further transactions occurred later. On February 10, 1931, there was a purchase on the street book of 285,000 July wheat for 57 Special; 200,000 of it went to 57 Special and 85 to 57-A. 57-A 310 Special account was 395,000 short on January 16, 1931. That was carried until February 9. The purchase of 85,000 just discussed, on February 10th, reduced this to 310,000 short. This was carried until June 11, 1931, on which day the whole 310,000 was bought in, evening the account. On the day following—this 310 in account 57-A was bought on June 11th. 200,000 in account 57 Special, was bought on June 12th, one day following. That evened both of the accounts. This is all a discussion of the July option.

The first trading day prior to May 18, 1931, 57 Special had a short position of 400,000 bushels September wheat. On May 18, 1931 there was a sale of 100,000 bushels September wheat shown by the street book, as being for account 57. 95,000 went to the 57 Special account, 5,000 went to the 57 Special A account. 57 Special account following that transaction had a short position of 495,000 bushels. It remained

short 495,000 without change until June 12, 1931. On that date a purchase of 495 balanced the account. There was a purchase on June 12th of 405,000, which also balanced the 57 Special Account, so that on June 12th in this future both accounts were balanced. That indicates that the accounts were traded in a similar manner by the same direction.

There was a purchase of 700,000 bushels of September wheat on June 12, 1931. 495,000 went to the 57 Special account and 205,000 to the 57 Special A account. The purchase which occurred on June 12, 1931, was closing out a short position which it had maintained since May 18, 1931. That account maintained a short position of 495,000 bushels from May 18th to June 12, 1931. (Tr. 771) There was a sale of 200,000 bushels of December wheat on July 1, 1931. 95,000 was posted to the 57 Special account and 105,000 to the 311 57 Special A account. The sale gave the 57 Special account a short position of 495,000 bushels of December wheat. That was maintained until July 14, 1931, on which date the account was balanced by the purchase of 495,000. 205,000 was posted to the 57 A special account on July 14th, balancing that account also.

The similarity of these transactions was significant to me, in that it indicated control and ownership in one person. In my answer to this last question, I took into consideration the fact that the profits out of 57-A special account had gone into 57 account though it still would have been significant to me if the profits had not gone into the 57 Special A account. (Tr. 772, 773, 774)

The 57 Special A account had a sale of 100,000 bushels of December wheat on July 3, 1931. It made that account short 205,000 bushels. The next transaction in the 57-A account in this same future was on July 14, 1931. (Tr. 775) A purchase of 205,000 was entered into the account, which balanced it.

On November 24, 1931, the 57 Special account had a short position of 400,000 bushels, May wheat. On that date a sale of 200,000 bushels was made. 95,000 was posted in the 57 Special account and 105,000 in the 57 Special A account. That 495,000 in the 57 Special account was carried from November 25, 1931 through November 30, 1931. During the month of November there were two transactions in 57 Special A account; a sale of 200,000 on November 24th, and a sale of 105,000 on November 25th. (Tr. 776) No further transactions

until December 10th when 100,000 May wheat was sold into the 57 Special A account.

312 On January 6, 1931 the accounts included in Exhibit 407 had a short position of exactly 2,000,000 bushels July wheat, in firms as follows:

Bartlett-Frazier Grain Co., Account No. 20, 100,000 short; Clement Curtis & Company, Account A. W. C., 600,000 short; Jackson Brother-Boesel & Co., Account No. 40, 235,000 short; Jackson Brothers Boesel & Company, Account C-209, 40,000 short; F. B. Keech & Company, Account A. W. C. 200,000 short; F. B. Keech Company, Account L, 200,000 short; James Kidston & Company, Account 8, 130,000 short; Uhlmann Grain Company, Account 57 special, 495,000 short. (Tr. 777) That is all July wheat, on the 6th day of January, 1931, which makes a total of 2,000,000 bushels short on that date. The only item in what I have termed controlled accounts on January 6, 1931 is 495,000 July wheat short in the Uhlmann Grain Company account 57 Special A.

Exhibit 360 shows Mr. Cutten reported 600,000 July wheat short through Clement, Curtis Company. That is the only item of wheat reported. Exhibit 407 shows his commitments with Clement, Curtis & Company to be 600,000 July wheat short. The only open commitments in July wheat that was reported by Mr. Cutten was the one in Clement, Curtis & Company. It was also reported by Clement, Curtis & Company and that was the only item that was reported by any commission house on that date. (Tr. 777A) That makes a difference of one million eight hundred ninety-five thousand.

According to Exhibit 362, Mr. Cutten reported on January 7, 1931, through Clement, Curtis Company, 320,000 July wheat short. That is the only item of wheat appearing. As shown by the books and records of the firms in evidence here and from my tabulation based upon them, Mr. Cutten's commitments in July wheat on January 7, 1931 were 320,000

313 through Clement, Curtis & Company; account A. W. C.; 235,000 through account number 40, Jackson Brothers Boesel & Company; 40,000 through account C-209, Jackson Brothers Boesel & Company; 200,000 through account A. W. C., F. B. Keech & Company; 200,000 through account L., F. B. Keech & Company; 130,000 through account number 8, James Kidston & Company; 495,000 in account 57 Special, Uhlmann Grain Company, and 495,000 in account 57 Special A, Uhlmann Grain Company. That made a total of 2,115,000 July

wheat short on that day; only 320,000 of which was reported —a difference in the report of 1,795,000 bushels.

The accounts definitely identified as those of Mr. Cutten show him short 2,305,000 bushels in July wheat on January 16, 1931, in the following accounts: Bartlett-Frazier Grain Company, 420,000 bushels short in account number 7; Clement, Curtis Company, account A. W. C., 220,000 bushels short; Jackson Brothers Boesel Company, account 40, 400,000 bushels short; Jackson Brothers Boesel Company, account C-209, 40,000 bushels short; F. B. Keech & Company, account A. W. C., 200,000 bushels short; F. B. Keech & Company, account L, 200,000 bushels short; James Kidston & Company, account 8, 330,000 bushels short; Uhlmann Grain Company, account 57 Special 495,000 bushels short. 57-A Special had a short position of 395,000 bushels July wheat on January 16, 1931.

On January 16, 1931, Mr. Cutten filed a report, Exhibit 364, in which he fails to show that he had any wheat futures whatsoever. As a matter of fact, on that date he was short, in accounts definitely identified as his, 2,305,000; and in 57-A account 395, or a total of 2,700,000.

314 On January 19th, Mr. Cutten was short 200,000 bushels July wheat through account A. W. C. and 400,000 bushels through account L; a total of 600,000 bushels short through F. B. Keech & Company. According to Exhibit 365, Mr. Cutten reported that 600,000 in the two accounts with the Keech Company. In addition to the items through F. B. Keech & Company, he was short 420,000 bushels through account No. 7 with Bartlett-Frazier & Company; 320,000 bushels through account A. W. C., Clement-Curtis Company, 400,000 bushels through account number 40, Jackson Bros., Boesel & Company; 165,000 bushels through account 209-C, Jackson Bros., Boesel & Company, 450,000 bushels through account No. 8, James Kidston & Company, and 495,000 bushels through account 57-Special with the Uhlmann Grain Company; a grand total of 2,850,000 bushels, including the 600,000 with Keech previously commented on. (Tr. 778, 779, 780 and 781) In addition to this there were 395,000 bushels short through account 57 Special A with the Uhlmann Grain Company. In other words, in accounts definitely identified as his, he was short July wheat 2,850,000. He only reported the two accounts in Keech Company of 600,000 and made no report on the 57-A special account with the Uhlmann Grain Company. In all, there were 3,245,000 July wheat short, 600,000 only of which was reported.

On January 20, 1931 Mr. Cutten reported, as shown in Exhibit 366, 605,000 bushels July wheat short through F. B. Keech & Company. He had that in two accounts. That consisted of 300,000 bushels short in the account A. W. C., and 305,000 bushels in account L.

According to my tabulations, in accounts definitely identified as being Mr. Cutten's, that is, identified by the commission houses, he was short 2,780,000 bushels. In account
315 47 Special A, the Uhlmann Grain Company, he was short 395,000, or a total of 3,175,000 bushels. He reported only 605,000 of this. In addition to the 605,000 with F. B. Keech & Company, he was 420,000 short in account No. 7, Bartlett-Frazier & Company; 320,000 short in account A. W. C., Clement Curtis & Company; 400,000 short in Account No. 40, Jackson Brothers Boesel & Company; 165,000 short in account 209-C, Jackson Brothers Boesel & Company; 375,000 short in account No. 8, James Kidston & Company; 495,000 short in account 57 Special, Uhlmann Grain Company, and 395,000 short in account No. 57 Special A, Uhlmann Grain Company.

Exhibit 366 shows 705,000 bushels of July wheat short through F. B. Keech & Company on January 24, 1931. That is the only time of wheat appearing. (Tr. 782, 783 and 784) That 705,000 consists of 500,000 bushels short through account A. W. C. with F. B. Keech and 205,000 bushels short in account L with F. B. Keech. He had commitments in the same option on the same day in other firms. Through Bartlett-Frazier & Company, account number 7, he had 420,000 bushels short. Through Clement, Curtis & Company, account A. W. C., he had 320,000 bushels short. Through Jackson Brothers Boesel & Company, account number 40, he had 400,000 bushels short. Through Jackson Brothers Boesel & Company, account 209-C he had 165,000 bushels short; through James Kidston & Company, account number 8, he had 375,000 bushels short. Through Uhlmann Grain Company, account 57 Special, he had 495,000 bushels short. The total of all the July wheat with the firms that I have just read, including Keech & Company, was 2,880,000 bushels short; in the 57-A Special account in the same future on the same date, there
316 was a short position of 395,00 bushels; a total of all of 3,275,000 bushels. (Tr. 785) Only 705,000 of this was reported, a difference of 2,570,000.

On January 26, 1931, as appears by Exhibit 367, in evidence, Mr. Cutten reported 705,000 July wheat short with F. B.

Keech & Company and also reported total short open commitments of 705,000. As a matter of fact, on that date the total short open commitments of Mr. Cutten in the accounts definitely identified as his was 3,180,000 bushels short. He had open commitments in July wheat in account 57-A Special of 395,000 bushels short. Exhibit 407, indicates the firms and the accounts and the amounts of the open commitments on that date.

On February 2, 1931, as shown by Exhibit 368, Mr. Cutten reported 705,000 net short with F. B. Keech & Company. (Tr. 786) He also reported on that date the total of all short open commitments, 705,000 bushels. That was not correct. His total open commitments on that date, in accounts definitely identified as his were 3,280,000 bushels short, that in 1931 July wheat option on February 2, 1931. (Tr. 787)

The 57 Special A account had a short position of 395,000 bushels. The total short position or grand total short position in the accounts definitely identified as his and in the 57 A Special account was 3,675,000. On February 2, 1931, in addition to what I have testified to, R. C. account with Jackson Brothers Boesel & Company had a short position of 200,000 bushels, July wheat. I made an investigation with respect to the manner in which the R. C. account was handled in comparison with the other accounts of Mr. Cutten's. I examined it in connection with all of the other accounts in Jackson
317 Brothers' books. In a general way, it operated very much as did the accounts that were definitely identified as his. I do not think that account was ever reported. This account R. C. with Jackson Brothers Boesel & Company at no time reached a position of 500,000 bushels. On February 5, 1931, it appears in evidence that Mr. Cutten reported a net open position of July wheat with Keech & Company of 505,000. That is correct, with Keech & Company. That was in two accounts; 500,000 in account A. W. C. and 5,000 in account L. The account A. W. C. remained at 500,000 until February 9, 1931. It first reached 500 at this particular time on January 24 and remained at 500 until February 9th when a purchase of 350,000 bushels was made, reducing it to 150,000. Mr. Cutten's report, Exhibit 369, reports a total of short open commitments of 505,000 in July wheat. That is not correct. He had a short position in the accounts definitely identified as being his of 2,490,000 bushels on February 5, 1931. The 57 A account had a short position of 395,000 bushels on that date, in the same future, July wheat. The R. C. account on February 5,

1931 had a short position of 20,000 bushels with Jackson Brothers Boesel & Company. In the accounts definitely identified as his he had 2,489,000 bushels; (Tr. 788, 789 and 790) and 395 with 57 A and 20 with the R. C. account, a total of 2,905, of which only 505,000 was reported, making a failure to report of 2,400,000. (Tr. 791)

It appears on Exhibit 370 Mr. Cutten reported on February 7, 1931, that he had a net position with Keech & Company of 505,000 July wheat short. That consisted of 500,000 bushels short in the A. W. C. account with F. B. Keech and 5,000
318 bushels short in the L account with F. B. Keech. F. B. Keech & Company reported that. Exhibit 370 likewise shows that Mr. Cutten's total short open commitments as of February 7, 1931, were 505,000 July wheat. That was not correct. Mr. Cutten was short July wheat through accounts definitely identified as being his, 2,590,000 bushels on February 7, 1931. (Tr. 792) Mr. Cutten's position with the Uhlmann Grain Company in account 57-A Special was 395,000 bushels; with Jackson Brothers Boesel Company in account R. C., he had a short position of 20,000 bushels July wheat. The total reported by Mr. Cutten was 505,000 bushels, as shown by 370. 505,000 bushels short was the total reported. That was reported by Mr.Cutten and by Keech.

On February 9, 1931, as shown by Exhibit 371, Mr. Cutten reported himself short with Keech & Company 150,000 July wheat. (Tr. 793). He was short 150,000 bushels in account A. W. C. with Keech & Company. That was reported to the Grain Futures Administration by Keech & Company as well as by Cutten. In this same report, 371, February 9, 1931, Mr. Cutten reported his total short open commitments were 150,000 July wheat. The records show that he was short 1,190,000 bushels in accounts definitely identified as being his, and 415,000 bushels in accounts carried under the names of relatives. The accounts in which the 415,000 was carried consisted of 395,000 in account 57 Special A with the Uhlmann Grain Company and 20,000 bushels through account R. C. of Jackson Brothers Boesel & Company. That is as of February 9, 1931, in July wheat.

According to Exhibit 372, Mr. Cutten reported as of February 27, 1931 no wheat at all. The only grain future re-
319 ported on that report is 905,000 May oats long with Jackson Brothers Boesel & Company. (Tr. 794 and 795) Mr. Cutten had a short position on February 27th, in accounts definitely identified as being his or 2,070,000 bushels in wheat

futures. The 57 A Special account had a short position of 310,000. The R. C. account with Jackson Brothers Boesel & Company had a short position of 20,000 bushels. On that date the total open short commitments in July wheat were in all accounts 2,400,000. None of the open commitments in July wheat were reported by Mr. Cutten.

According to Exhibit 373, Mr. Cutten reported no wheat futures as of March 14, 1931. (Tr. 796) On March 14, 1931, Exhibit 407 shows Mr. Cutten short 2,325,000 bushels of July wheat. That consists of 300,000 bushels in Account No. 7, Bartlett-Frazier & Company, 100,000 bushels in account No. 20 of Bartlett-Frazier & Company, 290,000 bushels in Account A. W. C. Clement Curtis & Company, 420,000 bushels in Account 40, Jackson Brothers Boesel & Company, 465,000 bushels in Account C-209, Jackson Brothers Boesel & Company, 350,000 bushels in Account A. W. C., F. B. Keech & Company, 200,000 bushels in Account No. 8 with James Kidston & Company, 200,000 bushels in Account 57 Special with the Uhlmann Grain Company, a total of 2,325,000 bushels. (Tr. 797) The 57 A Special account with the Uhlmann Grain Company showed 310,000 bushels short on that date. The R. C. account with Jackson Brothers Boesel & Company showed 65,000 bushels short. None of this July wheat was reported as shown by Exhibit 373. (Tr. 798) According to Exhibit 407, Mr. Cutten had a short position of 1,670,000 bushels in September wheat on March 14, 1931. None of that was reported by Br. Cutten. None of it was reported by the grain firms in which those accounts were held. None of those account, referring to
320 Exhibit 407, had in them 500,000 bushels of either future, July or September wheat.

On March 18, 1931, Exhibit 374, Mr. Cutten reported a long position of 440,000 May oats with Jackson Brothers. That is the only item reported. (Tr. 801) On the basis of Exhibit 407, Mr. Cutten had a short position in all wheat futures combined of 4,095,000 bushels on March 18, 1931, and the only report that he made to the Government was on oats, which was 440,000 long. On that day, March 18, 1931, as shown by Exhibit 411, all accounts combined had a short position of 4,470,000 bushels on March 18, 1931.

Exhibits 407 and 409 combined on April 9, 1931, show Mr. Cutten had a short position of 6,120,000 bushels. On April 10, the succeeding day, the total open commitments in wheat futures was 6,770,000 bushels short. No part of the open commitments in all wheat futures, as of April 9 and 10, 1931, were reported by Mr. Cutten.

On March 18, 1931 the open position as shown by Exhibit 407 of Mr. Cutten in July wheat was 2,425,000 bushels short. (Tr. 802 and 803) Account 57 A Special had a short position of 310,000 on March 18, 1931. Account R. C. with Jackson Brothers Boesel & Company was short 65,000 bushels. None of this was reported by Mr. Cutten. No reports were made by the grain firms covering Mr. Cutten's position on March 18, 1931. Exhibit 407 shows a short position of 1,670,000 bushels of September wheat March 18, 1931. The only thing reported was the oats, and that was 440,000. No wheat was reported either by Mr. Cutten or the grain firms in either future on that date. (Tr. 804) The next report rendered by Mr. Cutten after March 18, 1931, covered the date of November 5, 1931. From March 18, 1931, to November 5, 1931,
321 the open position of Mr. Cutten in grain futures was not reported to the Grain Futures Administration by Mr. Cutten. (Tr. 805)

Exhibit 375 shows Mr. Cutten long 500,000 May wheat with Bartlett-Frazier & Company in account No. 7 on November 3, 1931. The report is dated November 5, but a notation on it indicates that it covers the date of November 3rd. On November 3rd, 1931, according to Exhibit 407, Mr. Cutten was long May wheat 2,765,000 bushels. That consisted of 500,000 long in account No. 7 with Bartlett-Frazier Company; 405,000 long in account A. W. C. with Clement, Curtis & Company; 400,000 long in account C. W. A., Clement, Curtis & Company; 70,000 short in account C-209 Special, with Jackson Brothers Boesel & Company; 495,000 long in account A. W. C. with F. B. Keech; 485,000 long in account No. 8; with James Kidston & Company; 450,000 long in account No. 20 with William J. Springer; 300,000 long in account No. 30 with William J. Springer; and 200,000 short in account 57 Special with the Uhlmann Grain Company. That is 3,035,000 long and 270,000 short, or a net long position of 2,765,000. Exhibit 409 shows that account D. S. with Bartlett-Frazier, short 400,000; account R. C. with James Kidston & Company, long 325,000. As shown by Exhibit 407, Mr. Cutten was short 545,000 bushels December wheat on November 3, 1931. The only wheat reported by him as of November 3, 1931 was 500,000 May wheat long with Bartlett-Frazier & Company.

On November 20, 1931, as shown by Exhibit 376, Mr. Cutten reported only a net position with Bartlett-Frazier Company of 100,000 short. (Tr. 806-807) Exhibit 407 shows a short position of 1,315,000 and a long position of 345,000 or

a net short position of 970,000 bushels on November 20, 1931; all wheat futures combined. As shown by Exhibit 407, on November 20, 1931, he had a net short position of 525,-322 000 bushels in May wheat. As shown by Exhibit 409, the account D. S., Bartlett-Frazier & Company, had a short position of 400,000 bushels on November 20, 1931, in May wheat. In other words, 101,000 only was reported with Bartlett-Frazier Company and in all there were 925,000 in both the Bartlett-Frazier account and the D. S. account. There was a total short position in all accounts of 925,000. Bartlett-Frazier & Company reported 100,000 short. That was the only report from the commission firms on that day. (Tr. 808)

On November 30, 1931, Exhibit 407 shows a short position in May wheat of 2,435,000 bushels and a long position of 195,000; making a net short position of 2,240,000 bushels. That consisted of 400,000 bushels in Account No. 7, Bartlett-Frazier & Company, 400,000 bushels short, I should have said; 290,000 bushels short in Account C. W. A., Clement, Curtis & Company; 410,000 bushels in Account 209-C, Clement, Curtis & Company; (Tr. 811) 400,000 bushels short in account A. W. C. with F. B. Keech & Company; 195,000 bushels long in account L with F. B. Keech & Company; 90,000 bushels short in account No. 8, James Kidston & Company; 335,000 bushels short in account No. 20 with William J. Springer; 15,000 bushels short in account No. 30 with William J. Springer; 495,000 bushels short in Account 57 Special with the Uhlmann Grain Company. With Clement Curtis & Company there were two accounts which I have included in Exhibit 407. Those were accounts identified to me, in writing as being Mr. Arthur W. Cutten's accounts. With the Clement, Curtis Company Mr. Cutten had in May wheat at that time a total of 700,000 in these two accounts combined. Clement, Curtis did not report those accounts. On November 3, 1931, Clement, Curtis had traded for Mr. Cutten in Accounts A. W. C. and C. W. A., so that on that date his net long position with 323 Clement Curtis in May wheat was 805,000. They did not report that. On November 3, 1931, Mr. Cutten's position through William J. Springer was 750,000 May wheat long. Account No. 20 had 450,000 and Account No. 30 had 300,000, a total of 750,000 in those two accounts. These accounts were those identified by Mr. Springer to me in writing as Mr. Cutten's.

Mr. Springer did not report the 750,000 May wheat long in accounts 20 and 30, November 3, 1931. In accounts A. W. C.

and C. W. A. with Clement-Curtis on November 3, 1931 there was 805,000 May wheat long with Clement, Curtis. That was not reported by Clement, Curtis Company. Bartlett-Frazier reported 500,000 May wheat long on November 3, 1931. (Tr. 818) That was in account No. 7.

On March 18, 1931, Mr. Cutten was short with the grain firms of Jackson Brothers Boesel & Company in July wheat, 885,000. It was divided between accounts Number 40 and account C-209. That was not reported by Jackson Brothers Boesel & Company. On the same date, March 18, 1931, Mr. Cutten was short September wheat, with Bartlett-Frazier & Company, 500,000. That was not reported by Bartlett-Frazier & Company.

On March 14, 1931, Mr. Cutten was short with Jackson Brothers Boesel & Company, July wheat, 885,000 bushels. (Tr. 819) He was short 500,000 bushels September wheat with the Bartlett-Frazier Company on that same date. Jackson Brothers Boesel & Company did not report the July wheat short. Bartlett-Frazier Company did not report the September wheat short for that date. In account 57 Special on March 14, 1931, with the Uhlmann Grain Company, Mr. Cutten was short 200,000 bushels and account 57 A Special shows a short position of 310,000. That is a total short posi-
324 tion in the two accounts of 510,000 bushels July wheat on March 14, 1931. Those accounts were not reported by the Uhlmann Grain Company.

On February 27, 1931, as shown by our Exhibit 407, Mr. Cutten was short in July wheat with Jackson Brothers Boesel & Company. (Tr. 820) The short position on February 27th was 920,000 bushels. That was with Jackson Brothers Boesel & Company in July wheat. None of that was reported by Jackson Brothers Boesel & Company.

Exhibit 407 shows Mr. Cutten had a short position of 865,000 bushels with Jackson Brothers Boesel & Company in July wheat on February 9, 1931. That was not reported by Jackson Brothers Boesel & Company. On that date, Exhibit 371, Mr. Cutten reported his only short open commitments as 150,000 with Keech & Company. (Tr. 821) Mr. Cutten was short in 57-Special, on February 9, 1931, with the Uhlmann Grain Company, 200,000 bushels. Account 57 A Special shows 395,000 bushels short; a total of 595,000 bushels. 57 Special A was 395,000 short and 57 Special 200,000 short. That was not reported by the Uhlmann Grain Company.

On February 7, 1931, as shown by Exhibit 407, Mr. Cutten

was short 865,000 bushels in July wheat with the Jackson Brothers Boesel & Company. (Tr. 822) That was not reported by them. According to Exhibit 407, Mr. Cutten's position on February 7th was short 505,000 bushels with F. B. Keech & Company. It was all reported by F. B. Keech & Company. Account A. W. C. had 500,000 bushels and Account L had 5,000 and the two combined were reported as one unit by F. B. Keech & Company. Accounts A. W. C. and L, having 505,000 July wheat short, were also combined and reported by Mr. Cutten on that day. This Exhibit No. 370
325 shows 505,000 bushels short with F. B. Keech & Company, July wheat. On that same date, February 7, 1931, with the Uhlmann Grain Company, 57 Special showed a short position of 200,000 bushels, and 57 A Special showed a short position of 395,000 bushels in July wheat. (Tr. 823) 57 A had the same position on February 7th as it had on February 9th. Those were not reported by the Uhlmann Grain Company.

On February 5, 1931, as shown by Mr. Cutten's report of that date, he reported 505,000 with Keech & Company in July wheat. That consisted of 500,000 bushels short in account A. W. C. and 5,000 bushels in Account L. That was reported by F. B. Keech & Company. The two were combined and reported as one unit by F. B. Keech & Company. On the same day, in the same future, Mr. Cutten's position with Jackson Brothers Moesel & Company was 865,000 bushels short in the accounts included in Exhibit 409. That was not reported by Jackson Brothers Boesel & Company. (Tr. 824)

On February 2, 1931, Mr. Cutten reported 705,000 July wheat short with Keech & Company. That consisted of 500,000 bushels in account A. W. C. and 205,000 bushels in Account L., a total of 705,000 bushels short. They were combined by Mr. Cutten in his report to the Grain Futures Administration and by F. B. Keech & Company in their report to the Grain Futures Administration. On February 2, 1931, Account 57 Special with the Uhlmann Grain Company showed a short position of 495,000 bushels of July wheat. Account 57 Special A with the Uhlmann Grain Company was 395,000 bushels short on the same date. No open commitments were reported by the Uhlmann Grain Company.

It appears in evidence that Mr. Cutten reported as of January 26, 1931, 705,000 July wheat short with Keech & Company. That was divided into two accounts, 500,000 bushels
326 in account A. W. C., and 205,000 bushels in Account L. That was combined by Mr. Cutten in his report and those

two accounts were also combined by F. B. Keech & Company in their report. On January 26th, Mr. Cutten was short 865,000 bushels in July wheat with Jackson Brothers Boesel & Company in accounts included in this Exhibit 409. That was not reported by either Mr. Cutten or Jackson Brothers Boesel & Company. On the same date, Account 57 Special was 495,000 bushels July wheat short with the Uhlmann Grain Company. On the same date Account 57 A Special was short 395,000 bushels July wheat with the Uhlmann Grain Company. The Grain Futures Administration had no report covering those accounts from any source at all.

On January 24, 1931, Mr. Cutten reported he was short 705,000 July wheat with F. B. Keech & Company. They were carried in two accounts; 500,000 being in Account A. W. C. and 205,000 in Account L. They were combined by Mr. Cutten in his report. On the same date, Mr. Cutten was short with Jackson Brothers Boesel & Company to the extent of 565,000 bushels July wheat. Those open commitments were not reported by either Mr. Cutten or Jackson Brothers Boesel & Co. On the same date, Mr. Cutten was short 495,000 bushels July wheat in account 57 Special with the Uhlman Grain Company. In the same future, account 57-A Special showed a short position of 395,000 bushels. The open commitments in neither of these accounts were reported to the Grain Futures Administration by Mr. Cutten or the Uhlmann Grain Company.

As shown by Mr. Cutten's report, in evidence, as of January 20, 1931, he was short 605,000 July wheat with the firm of F. B. Keech & Company. That was carried as 300,000 bushels in account A. W. C. and 305,000 bushels in account L. Mr. Cutten combined them in reporting his accounts.

327 (Tr. 825, 826, 827 and 828) F. B. Keech & Company reported the accounts as 605,000 bushels short, combining the two accounts. On the same date, January 20, 1931, Mr. Cutten was short in account 57 Special with the Uhlmann Grain Company 495,000 bushels July wheat and in account 57-A Special he had a short position of 395,000 bushels on the same date. Those open commitments were not reported by either Mr. Cutten or the Uhlmann Grain Company.

On January 19th, 1931, as shown by an exhibit in evidence here, Mr. Cutten reported himself to have open commitments short in July wheat of 600,000 with Keech & Company. 200,000 of that was carried under the account A. W. C. and 400,000 under the account L. In reporting, Mr. Cutten

combined them as 600,000 with F. B. Keech & Company. F. B. Keech & Company reported those two accounts. (Tr. 829 and 830) On January 19, 1931, Mr. Cutten was short July wheat with Jackson Brothers Boesel & Company in the accounts in Exhibit 409 565,000 bushels. Those open commitments were not reported by either Jackson Brothers Boesel & Company or Mr. Cutten. On the same day, Mr. Cutten was short in account 57 Special with the Uhlman Grain Company 495,000 bushels July wheat, and 395,000 bushels July wheat short in Account 57 A Special. Neither the Uhlmann Grain Company nor Mr. Cutten reported those open commitments.

On January 16, 1931, it appears in evidence Mr. Cutten reported no open commitments in July wheat or any wheat futures. The total open commitments shown in Exhibit 407 consisted of 2,305,000 bushels July wheat short while in Exhibit 409, we have 395,000 bushels July wheat short, a total of 2,700,000 bushels. Account 57 Special with the Uhlmann Grain Company was 495,000 bushels July wheat short
328 and account 57 A Special was 395,000 bushels July wheat short. These open commitments were not reported by either Mr. Cutten or the Uhlmann Grain Company. January 7, 1931, the total open commitments in account 57 Special in July wheat with the Uhlmann Grain Company was 495,000 short; account 57 A Special with the Uhlmann Grain Company was also 495,000 bushels short.

Q. Is there anything significant to you in the fact that the accounts with the Uhlmann Grain Company were kept within the limit of 500,000 and near 495,000?

Mr. Magner: I object to that question, if the Referee please, as calling for the incompetent opinion of this witness.

The Referee: Objection overruled.

(Respondent excepts)

The Witness: Yes. The items of 495 are significant to me in themselves, and when they are considered in conjunction with the bookkeeping discrepancies that occurred at the same time they become even more significant. Most of these items would not have appeared if it had not been for those bookkeeping discrepancies that have been described here as clerical errors.

In nearly every instance the original transaction entered on the street book was in the round number, 500,000, 700,000, 800,000, and when it found its way into the grain ledgers it was split into these odd units of 495,000.

These open commitments of 495,000 bushels on January 7th

both in 57 Special and 57 Special A account were not reported by either Mr. Cutten or the Uhlmann Grain Company. On January 6, 1931, Mr. Cutten reports 600,000 short July
329 wheat with Clement, Curtis & Company. That was in one account, account A. W. C. (Tr. 831, 832 and 833) That was likewise reported by Clement, Curtis. On January 6, 1931, Mr. Cutten's open position in July wheat with the Uhlmann Grain Company in account 57 Special was a short position of 495,000 bushels. 57-A Special also showed a short position of 495,000 bushels. Those open commitments were not reported by either the Uhlmann Grain Company or Mr. Cutten to the Grain Futures Administration.

On January 5, 1931, Mr. Cutten reported only six hundred thausond July wheat short with Clement, Curtis. At that time he had a short position in account 57 Special of 495,000 bushels and in 57-A Special he was also 495,000 bushels short. Neither one of them were reported by the grain firm nor Mr. Cutten. (Tr. 834)

On December 1, 1931, Exhibit 407 shows a short position in May wheat of 1,200,000 bushels and a long position of 210,000, making a net short position of 990,000 bushels. That was carried as 200,000 bushels in account No. 7 with Bartlett-Frazier Company; 400,000 bushels in account 209-C with Clement, Curtis & Company; 200,000 bushels in account A. W. C. with F. B. Keech & Company. Those past three items have all been short. 195,000 bushels long in account L, with F. B. Keech & Company; 90,000 bushels short in Account 8, James Kidston & Company; 15,000 bushels long in account 20 with the William J. Springer; 15,000 bushels short in account 30, with William J. Springer; 295,000 bushels short in account 57 Special with the Uhlmann Grain Company, Mr. Cutten was short with F. B. Keech & Company in the account A. W. C., 200,000 and long in account L, 195,000. Both of those accounts had been combined by Mr. Cutten and reported to the Grain Futures Administration on many previous reports, and
330 both of them had been combined previously by F. B. Keech & Company and reported to the Grain Futures Administration. On that same date, in the same future, May wheat, Mr. Cutten reported with Uhlmann Grain Company 295,000 bushels May wheat short. His position on the same day, in the same future, in account 57-A Special was 305,000 bushels May wheat short. The 305,000 May wheat short was not reported by either Mr. Cutten or the Uhlmann Grain Company. The Uhlmann Grain Company made no reports of his

open commitments in May wheat on that date, and none during the two-year period under review.

During the years 1930 and 1931, the Uhlmann Grain Company at no time reported open commitments in accounts 57 Special and 57-A Special. (Tr. 835, 836 and 837)

On December 5, 1931, Mr. Cutten's position in May wheat as shown by Exhibit 407 by firms was as follows: Account 7, Bartlett-Frazier Company, short 200,000 bushels; Account 209, Clement, Curtis & Company, was short 400,000 bushels; account A. W. C. with F. B. Keech & Company was short 200,000 bushels; Account L with F. B. Keech & Company was long 195,000 bushels; acount No. 8 with James Kidston Company was short 135,000; account No. 20 with William J. Springer was long 15,000 bushels; account No. 30 with William J. Springer was short 15,000 bushels; account No. 57 Special with the Uhlmann Grain Company was short 295,000 bushels. The position of Account 57 A Special with the Uhlmann Grain Company in May wheat as of December 5, 1931 was short 305,000 bushels. Mr. Cutten did not report the open commitment in Account 57-A Special. (Tr. 838)

On December 7, 1931, as shown by Exhibit 407, Mr. Cutten's total position in May wheat was 1,445,000 bushels short
331 and 210,000 bushels long, or a net short position of 1,235,000 bushels. That was divided as follows: 200,000 bushels in Account No. 7, Bartlett-Frazier, short; 400,000 bushels short in account 209-C, with Clement, Curtis & Company; 200,000 bushels short in account A. W. C. with F. B. Keech & Company; 195,000 bushels long in account L with F. B. Keech & Company; 135,000 bushels short in account No. 8 with James Kidston & Company; 15,000 bushels long in account No. 20 with William J. Springer; 215,000 bushels short in account No. 30 with William J. Springer; 295,000 bushels short in account 57 Special with the Uhlmann Grain Company. (Tr. 839) The 57-A Special in the same future on the same date with the Uhlmann Grain Company was short 305,000 bushels. That was not reported by Mr. Cutten to the Grain Futures Administration.

On December 8, 1931, Exhibit 407 shows that Mr. Cutten's position in May wheat was short 1,145,000 bushels, long 210,000, or a net short of 935,000 bushels. That was divided as follows: 200,000 bushels short in Account No. 7 with the Bartlett-Frazier Company; 400,000 bushels short in account 209-C with Clement Curtis & Company; 200,000 bushels short in account A. W. C. with F. B. Keech; 195,000 bushels long

in account L with F. B. Keech; 35,000 bushels short in account No. 8 with James Kidston & Company; 15,000 bushels long in account No. 20 with William J. Springer; 15,000 bushels short in account No. 30 with William J. Springer; 295,000 bushels short in 57 Special with the Uhlmann Grain Company. (Tr. 840) Mr. Cutten did not report the 400,000 bushels short with Clement, Curtis & Company. He reported himself even, William J. Springer, and on that date he had 15,000 in the No. 20 account and 15,000 in the No. 30 account; offsetting one short and one long. In other words, on that report he
332 treated those accounts as both his; he combined them. On the same dates, December 8, 1931, Mr. Cutten's position, as shown by account 57-A, in the same future, showed 305,000 bushels short. That was not reported by Mr. Cutten. Referring now to December 7, 1931, it appears from Mr. Cutten's report that he was 200,000 May wheat short with Springer. At that time the position in that future in account No. 30 was 215,000 bushels short. Account No. 20 was 15,000 bushels long. Mr. Cutten reported himself in those two accounts as 200,000 short; using the 15,000 in the 20 account to offset the position of 15,000 in the 30 account. In this report Mr. Cutten evidently considered them as a unit. That is also true of the report of December 8, 1931.

According to the Exhibit 407, on December 9, 1931, in May wheat, Mr. Cutten was short 1,945,000 bushels and long 210,000 bushels, or net short 1,735,000. This was divided to account No. 7, Bartlett-Frazier short 200,000 bushels; account 209-C with Clement, Curtis & Company, short 400,000 bushels; account A. W. C. with F. B. Keech, short 200,000 bushels; account L with F. B. Keech, long 195,000 bushels; account No. 8, James Kidston & Company, short, 335,000 bushels; account No. 20, William J. Springer, long, 15,000 bushels; account No. 30, with William J. Springer, short 315,000 bushels; account No. 57, with the Uhlmann Grain Company short, 495,000 bushels. He reported himself as short with William J. Springer 300,000 bushels. The records show that at that time he was short in account No. 30 315,000 and in account 20 he was long 15,000. In making the report, it appears that Mr. Cutten evidently combined them and considered them as a unit. The 495,000 in the Uhlmann Grain Company, in account 57 Special, was reported by Mr. Cutten. He was short in the 57-A Special account 305,000 bushels. That was not reported by Mr. Cutten.

333 According to Exhibit 407, on December 14, 1931, Mr. Cutten was short 1,845,000 bushels and long 210,000 or a net short of 1,635,000 in May wheat. (Tr. 842, 843, 844 and 845) The firms in which Mr. Cutten had open commitments of 1,635,000 short were: 200,000 bushels in Account No. 7, Bartlett-Frazier & Company; 400,000 bushels in account 209-C, Clement, Curtis & Company; 200,000 bushels in account A. W. C. with F. B. Keech & Company; 195,000 bushels long in account L with F. B. Keech & Company; 335,000 bushels short in account No. 8 with James Kidston & Company; 15,000 bushels long in account No. 20 with William J. Springer; 215,000 bushels short in account No. 30 with William J. Springer; 495,000 bushels short in account 57 Special with the Uhlmann Grain Company. Mr. Cutten's report of that date reports himself short May wheat with William J. Springer 200,000. That is apparently the result of combining 15,000 long in account No. 20 with the 215,000 short in account No. 30, arriving at a net of 200,000 short. (Tr. 846) In making that report, Mr. Cutten apparently considered the two accounts as one unit. On the same date that he was 495,000 short with the Uhlmann Grain Company, the position of Account 57-A Special with the same company in the same future was short 405,000 bushels. That was not reported by Mr. Cutten.

On December 16, 1931, Mr. Cutten's position, as shown by the books and records in evidence, in May wheat, by firms, according to Exhibit 407, was short 200,000 bushels in account 209-C with Clement, Curtis; 200,000 bushels in account A. W. C. with F. B. Keech & Company, short; 195,000 bushels long in account L with F. B. Keech; 335,000 bushels short in account No. 8 with James Kidston & Co., 15,000 bushels long in
334 account No. 20 with William J. Springer; 215,000 bushels short in account No. 30 with William J. Springer; 495,000 bushels short in account 57 Special with the Uhlmann Grain Company. That is a total of 1,445,000 bushels short and 210,000 bushels long, or a net short of 1,235,000 bushels. (Tr. 847) Account 57-A Special on the same date in the same future showed a short position of 405,000 bushels. Mr. Cutten reported on that day his position with William J. Springer as 200,000 short. Account No. 20 with William J. Springer was long 15,000 bushels and Account No. 30 was short 215,000. The 200,000 that Mr. Cutten reported is apparently the result of combining accounts 20 and 30. The 405,000 May wheat short in account 57-A was not reported by Mr. Cutten. The 200,000

with Clement, Curtis was not reported by Mr. Cutten on December 16, 1931.

Mr. Cutten's position in May wheat, as shown by the books and records, on December 18, 1931 was short 200,000 bushels in account No. 209-C with Clement, Curtis & Company, short 200,000 bushels in account A. W. C. with F. B. Keech & Company; 195,000 bushels long in account L with F. B. Keech & Company; short 335,000 bushels in account No. 8 with James Kidston & Company; long 15,000 bushels in account No. 20 with William J. Springer; short 215,000 bushels in account No. 30 with William J. Springer; short 195,000 bushels in account No. 57 Special with the Uhlmann Grain Company. That is a total short of 1,145,000, against a long of 210,000 or a net short of 935,000, according to Exhibit 407. The open commitment of 200,000 May wheat, with Clement, Curtis was not reported by Mr. Cutten. The position of Account 57-A Special with the Uhlmann Grain Company was short 405,000 335 on that same date. That was not reported by Mr. Cutten.

I note from the report made by Mr. Cutten as of December 18, 1931, he reported a net position with William J. Springer of 200,000 May wheat short. Account No. 20 showed a long position of 15,000 bushels; account 30 a short position of 215,000. Apparently Mr. Cutten's report was the result of combining those two accounts and arriving at a net short of 200,000 bushels. The books and records of W. J. Springer & Company showed that he was actually long in account 20 on that date, December 18th, only 15,000, and on the same date he was short in account No. 30 215,000. On the same date, December 18, 1931, his position in 57-A Special account in May wheat was 405,000 bushels short. That was not reported by Mr. Cutten.

Mr. Cutten's position in May wheat on December 19, 1931 in account 209-C, with Clement, Curtis & Company, was short 200,000 bushels; in account A. W. C. with F. B. Keech & Company short 200,000 bushels; in account L, with F. B. Keech & Company long 195,000 bushels; in account 8, with James Kidston & Company, short 335,000 bushels; in account 20, with William J. Springer long 15,000 bushels; in account 30 with William J. Springer short 215,000 bushels; in account 57 Special with the Uhlmann Grain Company short 195,000 bushels. That is a total for Exhibit 407 of 1,145,000 bushels short, 210,000 bushels long, or a net short position of 935,000 bushels. The total short was 1,145,000 bushels against 210,000 bushels long. 57-A Special on the same date was 405,000 bushels

short, making a net short for all the accounts combined of 1,340,000 bushels. Mr. Cutten reported his position with William J. Springer as 200,000 May wheat short on December 19, 1931. (Tr. 848, 849, 850 and 851) He was short 215,000
336 in account No. 30 and long 15,000 in account No. 20. The 200,000 reported is apparently the net of these two. Account 57-A special with Uhlmann Grain Company on December 10, 1931 was short 405,000 bushels May wheat. Mr. Cutten did not report any commitments on that date with Clement, Curtis & Company.

Mr. Cutten's position in May wheat on December 22, 1931, as shown by Exhibit 407 was 1,745,000 bushels short and 210,000 bushels long, a net short of 1,535,000 bushels. (Tr. 852) That was divided as follows: 200,000 bushels short in account No. 7, Bartlett-Frazier Company, 300,000 bushels short in account A. W. C. with Clement, Curtis & Company, 200,000 bushels short in account 209-C, with Clement, Curtis & Company, 200,000 bushels short in account A. W. C. with F. B. Keech & Company, 195,000 bushels long in account L with F. B. Keech & Company, 335,000 bushels short in account No. 8, with James Kidston & Company, 15,000 bushels long in account No. 20 with William J. Springer, 215,000 bushels short in account No. 30 with William J. Springer, 295,000 bushels short in account 57 Special with the Uhlmann Grain Company. The 57-A Special on the same date, in the same future, was short 405,000 bushels. That 405,000 was not reported by Mr. Cutten. (Tr. 853) On December 22, 1931, Clement, Curtis did not report Mr. Cutten's position of 500 short May wheat. On that date, Mr. Cutten reported only 300,000 with Clement, Curtis. The books and records show Mr. Cutten long 15,000 bushels in account 20 with the William J. Springer Company on December 22, 1931, and short 215,000 bushels in account No. 30. Accounts number 20 and 30 combined would give a position of 200,000 short.

On December 21, 1931, Mr. Cutten was 500,000 bushels short May Wheat with Clement Curtis & Company. (Tr. 854)
337 He reported only 200,000 bushels of that. He was short 310,000 in account A. W. C. and 200,000 in account 209-C. The A. W. C. account was that carried on the books of Clement, Curtis under the name of A. W. C. or Arthur W. Cutten. In some places an abbreviation was used but most of the record was carried as Arthur W. Cutten. The 300,000 bushels of Arthur W. Cutten's in Clement, Curtis was not reported by him on December 21st. The Clement, Curtis

Company did not report the 500,000 short on December 21st. Mr. Cutten reported himself on December 21st 200,000 May wheat short with William J. Springer. That is apparently the result of combining accounts No. 20 and No. 30, No. 20 having a long position of 15,000 and No. 30 a short position of 215,000, which gives a short for the two accounts of net 200,000 bushels. One could not arrive at that figure, 200,000 based upon Springer's books, in any other fashion, and that is true with all of these reports that we have had reference to, where No. 20 has a long position and No. 30 has a short position. They all appear to be the result of combining the two accounts and treating them as a unit. In other words, I could not get the total net that Mr. Cutten reports, without combining them, based upon Springer's books, absolutely not. (Tr. 855 and 856)

Exhibit 407 shows that Mr. Cutten was short 1,845,000 bushels and long 210,000 bushels on December 23, 1931, giving a net short position of 1,635,000 bushels. That was divided as follows: 300,000 bushels short in Account No. 7 with Bartlett-Frazier & Company; 300,000 bushels short in account A. W. C. with Clement Curtis & Company; 200,000 bushels short in Account 209-C with Clement Curtis & Company, 200,000 bushels short in account A. W. C. with F. B. Keech & Company; 195,000 bushels long in account L with F. B. Keech & Company; 335,000 bushels short in ac-
338 count No. 8 with James Kidston & Company; 15,000 bushels long in account No. 20 with William J. Springer; 215,000 bushels short in account No. 30 with William J. Springer; 295,000 bushels short in account 57 Special with the Uhlmann Grain Company 57-A Special with the Uhlmann Grain Company showed a short position of 405,000 bushels. (Tr. 857) The accounts with Clement Curtis on that day were not reported by Clement, Curtis & Company. I find again on that date, according to my figures, based upon the books and records of Mr. Springer, a net short position in Account 30 of 215,000 and a net long in account No. 20 of 15,000. Mr. Cutten reported a net position of 200,000 short with Springer. Mr. Cutten's report evidently considers those two accounts together. That is the only way it could be arrived at from the records of William J. Springer.

According to Exhibit 407, on December 24, 1931, Mr. Cutten was short 1,910,000 bushels of May wheat and long 210,000 bushels, or a net short of 1,700,000. This was divi-

ded into various accounts as follows: Account No. 7 with Bartlett-Frazier & Company, 300,000 bushels short; account A. W. C. with Clement, Curtis & Company, 300,000 bushels short; account 209-C with Clement Curtis & Company, 200,000 bushels short; account A. W. C. with F. B. Keech & Company, 200,000 bushels short; Account L with F. B. Keech & Company, 195,000 bushels long; account No. 8 with James Kidston & Company, 335,000 bushels short; account No. 20 with William J. Springer, 15,000 bushels long; Account No. 30 with William J. Springer, 280,000 bushels short; account No. 57 Special with the Uhlmann Grain Company, 295,000 bushels short. Account 57-A Special on the same date in the same future showed a short position of 405,000 bushels. Mr. Cutten reports 265,000 May wheat short on December
339 24th with William J. Springer. That was arrived at by combining accounts 20 and 30 and deducting the 15,000 long in account No. 20 from the 280,000 bushels in account No. 30, to arrive at the 265,000 bushels short. The Uhlmann Grain Company did not report the position of 57-A Special. Mr. Cutten did not report it. (Tr. 858 and 859) Mr. Cutten did not report the position of 500,000 short with Clement Curtis & Company. He only reported 300,000 short. Clement Curtis did not report the 500,000 short.

On December 29, 1931, Mr. Cutten's position in May wheat, according to Exhibit 407, was short 2,010,000 and long 210,000, or short 1,800,000, net. In 57-A Special, shown on Exhibit 409, he was short 405,000. Total short, 2,415,000, less a long position of 210,000, or a net short position in all accounts of 2,205,000 bushels. According to Exhibit 407, this open position was carried as follows: 300,000 bushels short in account No. 7 with Bartlett-Frazier & Company; 300,000 bushels short in account A. W. C. with Clement, Curtis & Company; 200,000 bushels short in account No. 209-C with Clement, Curtis & Company; 200,000 bushels short in account A. W. C. with F. B. Keech & Company; 195,000 bushels long in account L with F. B. Keech & Company; 435,000 bushels short in account 8 with James Kidston & Company; 15,000 bushels long in account No. 20 with William J. Springer; 280,000 bushels short in account 30 with William J. Springer; 295,000 bushels short in 57 Special with the Uhlmann Grain Company and 405,000 short account 57 Special-A with the Uhlmann Grain Company. It appears that Mr. Cutten with Clement Curtis was short 50,000 from the books and records in evidence here. He only reported 300,000. Clement, Curtis & Company did not re-

port Mr. Cutten's position at 500,000 short, May wheat, as of December 29, 1931. 405,000 short with the Uhlmann
340 Grain Company in account 57-A special was not reported by Mr. Cutten or the Uhlmann Grain Company. (Tr. 860 and 861)

Referring now to the summary that I have made of the accounts identified by the grain firms as those of Mr. Cutten, and carried upon the books of the various grain firms as Mr. Cutten's, and referring particularly to the year 1930, Mr. Cutten's position in wheat futures on January 16, 1930 in all wheat futures combined, and included in Exhibit 407, was 800,000 bushels short. That was all in the May future. On January 16th he had a sale of 600,000 bushels. The position of Mr. Cutten in the accounts definitely identified by him, combined with those carried in other names and symbols, as shown by our Exhibit 409, the total wheat futures in all combined accounts, on January 16th was short 1,200,000 bushels. That is shown in Exhibit 411. That was all in the May future. There were trades in the accounts carried in Exhibit 409 on that date. (Tr. 863 and 864) Yes, there was a sale of 200,000 bushels.

On January 17, 1930 the position of all accounts shown in Exhibit 411, in wheat futures, was 1,300,000 bushels short. The position, as shown by our Exhibit 408, on that same day was 800,000 bushels short. As shown by Exhibit 408, there were sales of 600,000 bushels on that date. In the accounts carried on Exhibit 410 there were sales of 200,000 bushels.

On January 20, 1930, the accounts included in Exhibit 411 were short 1,400,000 bushels May wheat and had sales of 10,000 bushels May wheat. The accounts appearing in Exhibit 408 were short 900,000 bushels May wheat and had
341 no transactions. The accounts appearing in Exhibit 410 were short 500,000 bushels May wheat and had sales of 100,000 bushels. (Tr. 865)

On January 24, 1930, the accounts included in Exhibit 411 were short 1,050,000 bushels May wheat. Those included in Exhibit 408 were short 550,000 bushels May wheat and had purchases of 350,000 bushels. Those in Exhibit 410 were short 500,000 bushels May wheat and had no transactions.

On January 27, 1930, the accounts carried in Exhibit 411 were short 910,000 bushels May wheat and had purchases of 140,000. The accounts in Exhibit 408 were short 410,000 bushels May wheat and had purchases of 140,000. Those in

Exhibit 410 were short 500,000 bushels May wheat and had no transactions. (Tr. 866)

From January 29th to January 31st inclusive, the accounts included in Exhibit 407 equaled or exceeded 500,000 bushels in May wheat. The accounts included in Exhibit 407 show transactions when the open commitments were equal to or in excess of 500,000 bushels, on January 16, 17, 24 and 29th. In January 1930 the accounts included in Exhibits 407 and 409 had open commitments in one or more wheat futures equal to or in excess of 500,000 bushels, on January 13 and 14 and from January 16 to January 31st, inclusive. Trades were had in that same period, January 1930, in wheat futures, when the accounts had open commitments in one or more wheat futures equal to or in excess of 500,000 bushels, as shown by Exhibit 411 on January 13, 17, 18, 20, 24, 27, 29 and 31.

In February, 1930, the accounts contained in Exhibit 407 had open commitments in one or more wheat futures equal to or in excess of 500,000 from February 1st to 25th, inclu-
342 sive, and on the trading days of February 1, 3, 4, 5, 6, 7, 8, 10, 11, 13, 14, 15, 17, 18, 19, 20, 21, 24 and 25. Exhibit 407 shows trades were had in wheat futures when the commitments were equal to or in excess of 500,000 bushels on February 1, 3, 4, 5, 6, 7, 13, 14, 15, 17, 18, 19, 20, 24 and 25. Now, taking the accounts as combined, that is, those combined, 407 and 409, the accounts had open commitments in one or more wheat futures equaling or exceeding 500,000 bushels on the following days: February 1, 3, 4, 5, 6, 7, 8, 10, 11, 13, 14, 15, 17, 18, 19, 20, 21, 24 and 25. These accounts had transactions in wheat futures in which there were open commitments equaling or exceeding 500,000 bushels on the following days: February 1, 3, 4, 5, 6, 7, 11, 13, 14, 15, 17, 18, 19, 20, 24 and 25. (Tr. 867, 868, 869)

On two days in the month of March, 1930, the accounts contained in Exhibit 407, show open commitments and trades in wheat futures when the accounts had open commitments equal to or in excess of 500,000 in any one future. The combined account carried in Exhibits 407 and 409 had transactions on eight days on which they also had open commitments equalling or exceeding 500,000 bushels in one or more futures.

On 13 days in April, 1930, accounts carried in Exhibits 407 and 409, had transactions when the accounts showed open commitments in wheat futures equal to or in excess of 500,000

bushels. Those were April 2, 3, 4, 9, 12, 19, 21, 22, 24, 28, 29 and 30. (Tr. 870)

Exhibit 408 includes figures from the following accounts: Accounts No. 7 and No. 20 from the records of Bartlett-Frazier & Company; Accounts No. 209-C, No. 785, A. W. C., C. W. A., and S Special from the records of Clement, Curtis & Company, accounts No. 40, No. 209-C, No. 209-C Special,
343 No. 210-C, and L. F. C. from the records of Jackson Brothers Boesel & Company, accounts A. W. C. and L. from the records of F. B. Keech & Company, accounts No. 8 from the records of James Kidston & Company, accounts No. 20 and No. 30 from the records of William H. Springer, account No. 57 Special from the records of the Uhlmann Grain Company. Exhibit 410 includes figures from the following accounts: M. C., D. S. and Mrs. No. 7 from the records of Bartlett-Frazier & Company, M. C. and R. C. from the records of Clement, Curtis & Company, No. 211-C and R. C. from the records of Jackson Brothers Boesel & Company, No. 97 R. J. C., E. M. L. C. and M. C. from the records of F. B. Keech & Company, R. C. from the records of James Kidston & Company, H. C. and R. J. C. from the records of C. D. Robbins & Company and 57 A Special from the records of the Uhlmann Grain Company. Exhibit 411 is a tabulation of all of the accounts included in Exhibits 408 and 410 which I just read. According to Exhibit 407, Account A. W. C. was short 600,000 September wheat on June 13, 14, 16 and 17 with F. B. Keech & Company. The L account had no open positions at that time. (Tr. 873 and 874)

On the 19th of July, 1930, the account A. W. C. with F. B. Keech & Company was long 500,000 bushels December wheat. That was not reported by F. B. Keech & Company. On September 15, 1930, the account A. W. C. on the records of Keech & Company was short 650,000 bushels of December wheat. F. B. Keech & Company did not report that. A. W. C. and L. accounts combined, from the records of F. B. Keech & Company on October 28, 29, 30 and 31 were short 595,000 bushels of December wheat. Those were not reported to the Grain Futures Administration by Keech & Company. On November 1st and 3rd, 1930, both of these accounts combined had a short position of 595,000 bushels of December
344 wheat. They were not reported. (Tr. 875 and 876) On November 4th, 1931, the accounts A. W. C. and L. combined had a short position of 695,000 bushels May wheat. On November 5th, 6th, 7th, 9th, 10th and 12th, 1931, the two

accounts had combined short positions of 895,000 bushels May wheat. Those open commitments were not reported by F. B. Keech & Company.

On the books of F. B. Keech & Company there was carried an account R. J. C. and also an account A. W. C. (Tr. 877) There appears a sale of 200,000 bushels December wheat in the account of A. W. C. on June 18, 1930. Also, on June 21, a sale of 400,000 bushels December wheat appears for the account R. J. C. with F. B. Keech & Company. Both accounts, from June 21st, had a short position; the R. J. C. account was short 400,000 and the A. W. C. or A. W. Cutten account was short 200,000 until June 23, on which date it became short 400,000. The R. J. C. account remained short until July 9, 1930, on which day a purchase of 400,000 bushels balanced it. On the same day a purchase of 200,000 bushels was applied against the A. W. C. account, reducing it to 200,000 bushels short. (Tr. 878)

There was a purchase of 400,000 bushels in the R. J. C. account on July 16 and another purchase of the same amount on July 17th. In the A. W. Cutten account there was a purchase of 200,000 bushels on July 15 and 200,000 more on July 17th. That gave both accounts a long position. They both reversed from short to long about the same time. They maintained a long position until July 28, 1930, on which date they were both balanced by sales. They were moving decidedly in unison, and the indications were that the transactions
345 were directed by the same mind. On June 21, 1930, the M. C. account was short 500,000 bushels September wheat with F. B. Keech & Company. It first reached 500,000 on June 18 and maintained that position until June 23rd, on which day it was reduced to 490,000. It stayed at 490,000 from June 23rd until July 2nd, on which date it was balanced.

On October 25, 1930, the L. account with F. B. Keech and the R. J. C. account with F. B. Keech, each had sales of December wheat; 300,000 bushels was entered into the R. J. C. account and 200,000 into the L account, giving each of them a short position. The short position of the L account was increased by further sales until it had acquired a position of 395,000 bushels short on October 29th. It maintained this position of 395,000 bushels short until November 5, when other purchases and sales gave it a position of 495,000 bushels short. It was carried short at that figure until November 13th, on which date it was balanced by a purchase of 495,000 bushels. On the same date the original 300,000 bushels that

was entered in the R. J. C. account was bought in, balancing both accounts as of November 13, 1930. (Tr. 879, 880 and 881)

Account No. 20 with Bartlett-Frazier & Company acquired a short position of 500,000 bushels of July wheat on February 14, 1930, and kept this position until February 26th, on which date it was balanced. There was a trade on February 14th. Those open commitments and trades were not reported by the Bartlett-Frazier Company. On April 3, 1930 account No. 7 reached a long position of 525,000 bushels; remained long on April 3, 4, 5, 7 and 8, reached 600,000 on April 9th, remained long 600,000 on April 10th and 11th. Account No.
346 20 of Bartlett-Frazier Company reached a long position of 600,000 bushels on April 9, remained long 600,000 bushels on April 9, 10 and 11. The accounts 7 and 20 combined had a short position of 600,000 bushels on the 12, 14, 15, 19, 21 and 22nd, and a short position of 500,000 bushels on the 30th The two accounts combined had a long position of exactly 500,000 bushels on May 1, 2, 3, 5, 7, 8, 9, and 10th. Bartlett-Frazier & Company did report those. They did not report those in February and April that I have already testified concerning. (Tr. 882 and 883)

On December 26, 27, 29, 30 and 31, 1930, accounts No. 7 and No. 20 combined had a short position of exacly 500,000 bushels July wheat. On May 8, 9, 10, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29 and 31, 1930, accounts No. 7 and No. 20 of Bartlett-Frazier Company combined had a short position of 600,000 bushels, September wheat. These open commitments were not reported to the Grain Futures Administration. On June 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, accounts No. 7 and 20 combined had a short position of 600,000 bushels September wheat. That was not reported by Bartlett-Frazier & Company. On June 13th these two accounts had a short position of 800,000 bushels. On June 14, 16, 17, 18, 19, 20, 21, 23, 24, and 25, each of the accounts had a short position of 495,000 bushels, or a total short position for the two of 990,000 bushels, none of which was reported to the Grain Futures Administration. They maintained the side by side position of 495,000 for ten trading days. None of it was reported to the Grain Futures Administration.

On August 6, 7, 8, and 9th accounts Nos. 7 and 20 with Bartlett-Frazier & Company combined had a long position of exactly 500,000 bushels December wheat. That was
347 not reported by the Bartlett-Frazier Company. On March 13, 14, 16, 17, 18 and 19th Accounts Nos. 7 and 20

combined had a short position of 500,000 bushels of September wheat. On March 20, 21, 23, 24, 25, 26, 27, 28, 30 and 31st, these two accounts had a short position of 600,000 bushels, September wheat. None of them were reported. In the month of April, 1930, they had a short position of exactly 600,000 bushels of September wheat on April 1, 2, 4, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, and 17. In every case the dates given here are trading days. Sundays and holidays are omitted. Those open commitments were not reported to the Grain Futures Administration, as shown by the records. (Tr. 884, 885, and 886)

On July 27, 1931, accounts No. 7 and No. 20 combined showed a short position of 500,000 bushels in December wheat. On July 28, 29, 30 and 31 these two accounts had a short position of 700,000 bushels. On August 1st they also had a short position of 700,000 bushels. Those commitments in December wheat, for the months of July and August, were not reported to the Grain Futures Administration by Bartlett-Frazier & Company.

On March 6, 1930, account M. C. had a sale of 200,000 bushels July wheat. On the same date, account D. S. had a sale of 400,000 bushels. These two accounts remained short, M. C. being short 200,000 and D. S. being short 400,000 until April 2, 1930, on which date both accounts reversed position, a purchase of 300,000 being entered in the M. C. account and the purchase of 600,000 being entered in the D. S. account, giving the M. C. account a long position of 100,000 and the D. S. a long position of 200,000.

During the same period the Number 20 account had been short 200,000 bushels. That is, from March 12th, 1930,
348 until April 1, 1930. On April 2, a purchase of 475,000 bushels was entered in the No. 20 account, reversing it to a long position of 275,000. On the same day a purchase of 125,000 was entered in No. 7 account. That is, all four of these accounts, M. C., D. S., No. 7 and No. 20, had purchases on April 2nd, reversing three of them from a short to a long position and giving one of them the No. 7, a new long position. They all remained long until April 12, 1930. On this date a sale of 200,000 was entered to the M. C. account, reducing it to 200,000 long, and a sale of 200,000 was entered into the D. S. account, balancing it. A sale of 200,000 was entered into the No. 7 account, reducing it to 400,000 long, and a sale of 400,000 was entered in the No. 20 account, reducing it to 200,000 long. (Tr. 887 and 888)

Both the M. C. and the No. 7 accounts had sales of 200,000 bushels September wheat, on April 22, 1930, giving each of them a short position of 200,000. On May 7th there was an additional 200,000 sold for each of these accounts, giving each of them a short position of 400,000. They each remained in exactly 400,000 bushels during the month of May, 1930, and stayed at that figure until June 14, 1930. On that date 200,000 bushels of September wheat was sold. 95,000 of that went to account No. 7, giving it a short position of 495,000. 95 went to account No. 20, giving it a short position of 495,000 and 10,000 went to account M. C., giving it a short position of 410,000. The position of these four accounts, as of June 16, was 495,000 short in No. 7, 495,000 short in No. 20, 410,000 short in the M. C. and 400,000 short in D. S. The accounts maintained a short position until June 26th, on which date a purchase evened each of the four accounts. I cannot attribute that all to coincidence. It seems to me that it is almost conclusive proof of operation under one control.

349 On August 4, 1930, account D. S. and account No. 7 each had purchases of 200,000 bushels December wheat, giving each of them a long position of 200,000. On August 6th, each of them had an additional purchase of 200,000, giving them a long position of 400,000. On August 11th, each of them had sales of 400,000 evening each of the accounts. (Tr. 889 and 890)

The Mrs. No. 7 account had only one transaction in it during the two years or during the years 1930 and 1931. On February 4, 1930, there was a sale of 500,000 bushels of July wheat entered on the street book of Bartlett-Frazier & Company for Account No. 20. 495,000 of this was posted to account No. 20 and 5,000 to the account Mrs. No. 7. That gave account No. 20 a short position of 495 and account Mrs. No. 7 a short position of 5. They both remained at those same figures until February 13th, that is, account No. 20 changed on February 13th, while account Mrs. No. 7 remained at 5 short until February 27th. On that day the five was bought in. The account was not used again in the years 1930 and 1931. The bookkeeping discrepancy was suggestive, the fact that if it had not been for that bookkeeping discrepancy that has been described as a clerical error, account No. 20 would have had 500,000 bushels on February 4th, and it was suggested that the 5,000 was taken out in order to avoid account No. 20 reaching 500,000 bushels. At any rate, that was the effect of the transaction. I recall on that date appearing on

the street book, a vertical line under the figures "No. 20" indicating that all of the 500,000 went to the No. 20 account. On June 14, 1930, each of these accounts was short 495,000 bushels of September wheat. They maintained that
350 position until June 26, 1930. (Tr. 891 and 892) On that date purchases of 495,000 were entered in each of these accounts and balanced them both. Account No. 20 was short 495,000 July wheat on February 4, 5, 6, 7, 8, 10, 11 and 13, 1930, and it then reached 500,000 and remained short 500,000 on February 14, 15, 17, 18, 19, 20, 21, 24 and 25. In the month of June, 1930, both No. 7 and No. 20 were short 495,000 September wheat on June 14, 16, 17, 18, 19, 20, 21, 23, 24 and 25. They were both short 495,000 from June 14th to 25th, inclusive, and on the 25th a purchase of 495 was entered in each of the accounts to balance them. They show a movement in unison indicating control.

Jackson Brothers Boesel & Company have identified in writing accounts 40, 209-C, 209-C Special, 210-C and L. F. C. as accounts of Arthur W. Cutten. Those accounts combined were short September wheat in May, 1930, on May 15, 16, 17 and 19 in the amount of 620,000 bushels and on May 20 and 21 in the amount of 570,000; on May 22, 23, 24, 26, 27, 28, 29 and 31 in the amount of 820,000. These open commitments were not reported by Jackson Brothers Boesel & Company. (Tr. 893 and 894) The same five accounts had a position in September wheat during the month of June, 1930. They were short 820,000 bushels on June 2, 3, 4, 5, 6, 9 and 10, and were short 570,000 bushels on June 11th. Jackson Brothers Boesel & Company did not report those accounts. The same five accounts in the months of June and July 1930 were short 650,000 bushels December wheat on June 30 and on July 1 and 2, and then were short 530,000 bushels December wheat on July 3, 7, 8, 9, 10, 11, 12, 14 and 15; then were long 600,000 bushels December wheat on July 17th. These ac-
counts of Mr. Cutten divided in five sections with Jack-
351 son Brothers Boesel & Company were not reported by Jackson Brothers Boesel & Company. (Tr. 895) The only date that I have enumerated on which they were reported, was on July 17th, when the last item mentioned of 600,000 bushels December wheat long, was reported. During the month of September, 1930, Mr. Cutten had 500,000 or more December wheat with Jackson Brothers Boesel & Company. Those accounts show a long position in December wheat of 900,000 bushels, on September 2, 3, 4, 5, 6, 8, 9, 10.

11, 12, 13, 15, 16, 17, 18, 19, 20, 22 and 23. That is split into two accounts, C-209 and L. F. C. each of which was long 450,000 bushels, to make up the total of 900,000. Those were not reported by Jackson Brothers Boesel & Company, although both of those accounts were identified as Mr. Cutten's by them. (Tr. 896) On December 29, 30 and 31, 1930, these accounts showed 515,000 bushels July wheat short, with Jackson Brothers Boesel & Company. They were not reported by Jackson Brothers Boesel & Company.

During the month of January, 1931, Mr. Cutten had open commitments in July wheat, with Jackson Brothers Boesel & Company equal to or in excess of 500,000 bushels, on January 2, 3, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30 and 31. These open commitments were not reported by Jackson Brothers Boesel & Company. In the month of February, 1931, Mr. Cutten had open commitments in July wheat equal to or in excess of 500,000 bushels on February 2, 3, 4, 5, 6, 7, 9, 10, 11, 13, 14, 16, 17, 18, 19, 20, 21, 24, 25, 26, 27 and 28. The records show that these accounts with Jackson Brothers were short in excess of 500,000 bushels July wheat. It was divided between accounts No. 40 and No. C-209. (Tr. 897) They were not reported by Jackson Brothers Boesel & Company.

352 During the month of March, 1931, Mr. Cutten had with Jackson Brothers Boesel & Company, July wheat equal to or in excess of 500,000 bushels. He had a short position in excess of 500,000 on every trading day in March; that is, on March 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 30 and 31. Jackson Brothers Boesel & Company did not report any of those. During the month of April, 1931, Mr. Cutten had open commitments in July wheat, with Jackson Brothers Boesel & Company which equalled or were in excess of 500,000 bushels on April 1, 2, 4, 6, 7, 8, 9, 10, 11, 13, 14, 15 and 16. (Tr. 898) On April 10, 11, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 27, 28 and 29 he had a short position in September wheat in excess of 500,000 bushels with the same firm. (Tr. 899) That was divided between accounts No. 40 and 209-C. They were not reported by Jackson Brothers Boesel & Company. The commitments in July wheat during the month of April were not reported by Jackson Brothers Boesel & Company. On April 24, 25, 26, 27, 28 and 29, Mr. Cutten had open commitments equal to or in excess of 500,000 bushels in December wheat future. That was divided between Accounts 40 and 209-C. They were

not reported by Jackson Brothers Boesel & Company. On August 7th, these accounts with Jackson Brothers Boesel & Company showed a total short position of 695,000 bushels. Those are accounts 40 and C-209. This 695,000 also appeared on August 8th. On August 10th there was a total short position of 1,120,000 with Jackson Brothers Boesel & Company. That was through the same four accounts; that is, 40, C-209, C-209 Special and C-210. These same four accounts remained open until the end of the month, with varying short positions, the total being 1,235,000, on August 13, 14 and
353 15; 1,135,000 on August 17, 18 and 19; 1,435,000 on August 20; 935,000 on August 21 and 22; 1,235,000 on August 24, 25, 26, 27, 28, 29 and 31. None of those open commitments were reported by either Mr. Cutten or Jackson Brothers Boesel & Company. They were not reported to the Grain Futures Administration at all.

Mr. Cutten had open commitments in December wheat with Jackson Brothers in the month of September that equaled or exceeded 500,000 bushels in accounts Nos. 40, C-209, C-209 Special, and C-210, on September 1, 2, 3, 4, 8, 9, 10, 11, 12 and 14, in the amount of 1,235,000 bushels. That was not reported by Jackson Brothers Boesel & Company nor by Mr. Cutten. Then on September 15th this short position was reduced to 845,000 bushels, remaining at that figure September 15, 16, 17, 18, 19, 21, 22, 23 and 24. Those last items from the 14th on were not reported by Jackson Brothers Boesel & Company or by Mr. Cutten. Account No. 40, identified in the record as that of Mr. Cutten, had a position in December wheat on August 5, 1931 of 495,000 bushels short. It remained short 495,000 without any transactions on August 5, 6, 7, 8, 10, 11 and 12. On the 13th the purchase of 105,000 bushels was entered in this account, reducing its short position to 390,000 bushels. (Tr. 900, 901 and 902) That account on August 20th was 490,000 bushels short. Not one of the accounts during the years 1930 and 1931 with Jackson Brothers Boesel & Company ever equaled 500,000 bushels. They were so handled that neither one of Mr. Cutten's identified accounts ever equaled 500,000. Those accounts identified by the firm as his are 40, 209-C, 209-C Special, 210-C and L. F. C. (Tr. 903) In addition to those accounts identified as those belonging to Mr. Cutten, there were three other accounts in Jackson Brothers Boesel & Company, R. C.,
354 211-C and 212-C. I don't think 212-C ever had any wheat transactions. Neither of those two accounts, R. C.

or 211-C ever equaled or exceeded 500,000 bushels in any one future.

In my examination of the books in evidence here, I noted a transfer of the profits from Mr. Cutten's 209-C account to the R. C. account. On September 29, 1931, there was a transfer of $21,253.24, which was the total credit balance in the 209-C account as of that date. This was transferred—a notation on the ledger to the R. C. stock account. (Tr. 904)

The account Number 59 with James Kidston & Company was carried in some instances as R. J. C. or R. C. From October 25 through October 31, 1930, the 59 account was short 200,000 bushels May wheat. During the same dates, October 29, 30 and 31, account No. 8 was also short 200,000 bushels, both going short on the sale of 200,000 made on October 25, 1930. On October 29, 1931, account R. C. had a purchase of 25,000 bushels May wheat; 100,000 more was bought on October 30th; 200,000 more on October 31; so that on October 31, 1931 it was long 325,000 bushels. The long position on October 30 was 125,000 bushels and on October 29, 25,000 bushels. Account 8, on October 29, 1931, was 485,000 bushels May wheat long. Combining the 485,000 in account No. 8 with that of the 59 or R. C., they would have equaled 510,000. They were not reported by James Kidston & Company. Combining accounts 8 and R. C. or 59, whatever it is known as, on both October 30 and 31, of 1931, May wheat, the two combined exceeded 500,000 on those two days. They were not reported by Kidston & Company. (Tr. 905 and 906) Combining the two, 8 and 59 or R. C., they exceeded 500,000 bushels May wheat on November 2, 3, 4, 5, 6, 7, 9, 10, 12 and 13. They were not reported by Kidston & Company.

355 The Clement, Curtis Company have identified here in evidence, by written identification, four sections of Mr. Cutten's account with them, known as C. W. A., 209-C, 785 and S. Special, and in addition to that they have the Arthur W. Cutten account, not carried under Code, making five. In other words, there was one account carried on the books under the name of Arthur W. Cutten, not under a Code. (Tr. 907) In addition to that there were two other Cutten accounts. The open commitments in those five accounts, in December wheat, on June 30, 1930 were 600,000 December wheat short. That consisted of 400,000 bushels short in account A. W. C. and 200,000 bushels short in account C-209. When I refer to C-209, it is the same as 209-C. It is carried on the books in different ways. The Arthur W. Cutten ac-

count and 209-C are the only two that were active in that future in that month. Those accounts had a short position of 600,000 bushels December wheat on July 1, 2, 3, 7 and 8. They were not reported by Clement Curtis & Company. The open commitments of June 30th in December wheat, about which I just testified were not reported to the Grain Futures Administration. The two accounts, that I am mentioning, the Arthur W. Cutten account and the 209-C, had a long position in December wheat on August 6 and 7 of 600,000 bushels; on August 8th, 1,000,000 bushels; on August 9th and 10th, 600,000 bushels; on August 15, 16, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28 and 29 they had a long position of 600,000 bushels. On August 11th the two accounts combined had a long position of 600,000 bushels. On August 7, 8 and 9 account A. W. C. was reported and on August 23, 25, 26, 27, 28 and 29, account 209-C was reported by Clement, Curtis & Company. The total open commitments in the 209-C account were not combined with the open commitments in the other account of Arthur W. Cutten. (Tr. 908, 909 and 910)

356 There were three accounts active in May, 1931, the Arthur W. Cutten account, the C. W. A. account, and the S. Special account. These were short 570,000 bushels of September wheat on May 18, 19, 20, 21, 22 and short 670,000 bushels of September wheat on May 23, 25, 26, 27, 28 and 29. They were not reported by Clement, Curtis & Company. On June 1, 2, 3 and 4 they had a short position of 670,000 bushels September wheat, not reported by either Clement, Curtis or Mr. Cutten. (Tr. 911) On April 27, 28, 29 and 30, 1931, the accounts identified as Mr. Cutten's had a short position in December wheat of 500,000 bushels. They were not reported. On May 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15 the accounts were short 500,000 bushels. They were not reported by Clement, Curtis & Company. On May 16, 18, 19, 20, 21 and 22 they were short 600,000 bushels. On May 23 and 25, they were short 700,000 bushels, on May 26, 27, 28, 29 they were short 690,000 bushels. On June 1, 2, 3, 4, 5, 6, they were short 690,000 bushels. On June 8 and 9 they were short 890,000 bushels. On June 10, 11, 12, 13, 14, 15 and 16 they were short 1,290,000 bushels. On June 17 they were short 890,000 bushels. On June 18 and 19 they were short 1,090,000 bushels. On June 20th they were short 620,000 bushels. (Tr. 912) On June 22 and 23 they were short 820,000 bushels.

On July 13 they were short 600,000 bushels. On July 14 and 15 they were short 800,000 bushels. On July 21 they

were short 800,000 bushels. On July 22 and 23 they were short 900,000 bushels. On July 24, 25 and 27 they were short 815,000 bushels. On July 28 and 29 and 30 they were short 815,000 bushels. On July 31 they were short 915,000 bushels. On August 1, 3 and 4 they were short 915,000 bushels. On August 5 and 6 they were short 1,015,000 bushels. On August 8 they were short 615,000 bushels. On August 11,
357 12, 13, 14 and 15 they were short 675,000 bushels. On August 17th they were short 575,000 bushels. None of those were reported at all. None of these accounts with Clement, Curtis were reported during the months of April, May, June, July and August in December wheat futures, by Clement, Curtis or Mr. Cutten. (Tr. 913 and 914)

During the months of September, October, November, and December, 1931, these five, identified as Mr. Cutten's accounts, were short May wheat in excess of 500,000 bushels on September 30th and on October 1, 2, 3, 5, 6, and 7, and on October 24, 26, 27, 28, 29, 30 and 31, and on November 2, 3, 4, 5, and 7, 9, 10, 12, 13, 24, 25, 27, 28 and 30, and on December 21, 22, 23, 24, 28, 29, 30 and 31. These open commitments were not reported by Clement, Curtis & Company at any time, to the Grain Futures Administration.

The account A. W. C. or Arthur W. Cutten on January 10, 1930 was short 400,000 bushels May wheat. On January 13, 1930, the M. C. account had a sale of 200,000 bushels, giving it a short position of 200,000. It remained at that figure until January 16, on which date both the M. C. account and the Arthur W. Cutten account had each a sale of 200,000 bushels, giving each of them a short position of 400,000 bushels. After the sale of January 16, of 200,000, they both remained at 400,000 for some days, and on February 6, 1930, after several other transactions had been entered in the accounts, they each had a purchase of 300,000 bushels May wheat, reducing each of them to a short position of 200,000 bushels. Then on February 7th, they each had a purchase of 200,000 balancing both of the accounts.

On January 27th, both the accounts, that is, the account M. C. and the account A. W. C. had a sale of 200,000 bushels;
giving each of them a short position of 200,000 July
358 wheat. On the 29th of January, A. W. C. account had an additional sale of 200, and on the 31st the M. C. account had an additional sale of 200, giving them each a short position of 400,000 bushels. They remained at 400,000—that is, the A. W. C. account remained at 400,000 until Feb-

ruary 4th. The M. C. account had a sale of 200,000 on February 3rd, giving it a short position of 600. On the same day, that is, February 4th, the A. W. C. account had a sale of 200,000. With two or three other transactions, the M. C. account reached the short position of 500,000 bushels, and the Arthur W. Cutten account a short position of 950,000. They remained at those figures until February 26th, on which date they were both evened by a purchase of the full quantity in the accounts. Both accounts, A. W. C. and M. C., had a sale of 100,000 July wheat on March 12th; giving each of them a short position of 100,000. These positions were carried in each account until March 22nd, on which date both accounts had a purchase of 100,000, evening both of them. As an accountant, the similarity in these transactions suggested to me that they were handled under the same control.

Combining accounts numbered 20 and 30, as Mr. Cutten did later in his reports subsequent to November 30, 1931, with William J. Springer, the open commitments in May wheat of the two accounts on October 31, 1931 were long 750,000 bushels May wheat were not reported by Mr. Springer. During the mo h of November, 1931, the accounts Nos. 20 and 30 combined, identified by Mr. Springer as those of Mr. Cutten and so treated by Mr. Cutten in his reports, equaled or exceeded 500,000 bushels of May wheat, on November 2, 3, 4, 5, 6, 7, 9, 10 and 12 and on November 25, 27 and 28. Mr. Springer did not report that. (Tr. 915, 916, 917, 918 and 919)

359 Based upon Exhibit 407, Mr. Cutten had a short position in all wheat futures combined, on February 14, 1930, of 1,760,000 bushels. On February 25, 1930, this short position had been increased to 3,055,000 bushels. That is an increase of 1,295,000 bushels in that period, which covered nine trading days. February 25, 1930 is the date of the telegrams that were introduced here. On June 20, 1930, according to Exhibit 407, Mr. Cutten was short 2,915,000 bushels, all sheat futures combined. On June 25 his short position was 3,725,000. That is an increase of 810,000 bushels. The combined accounts on June 20, 1930, had a short position, in all wheat futures combined, of 5,025,000 bushels. On June 24, 1930 that had reached a short position of 7,525,000 bushels. On April 10, 1931 Exhibit 407 showed a short position of 6,295,000 bushels. (Tr. 921 and 922) Exhibit 407 are accounts that have been identified as accounts of Mr. Cutten's. On April 11, 1931, he was 6,295,000 bushels short.

The Arthur W. Cutten account with F. B. Keech & Company on January 17, 1930, was short 500,000 bushels May wheat. That is account A. W. C. of Arthur W. Cutten, on the F. B. Keech records. It remained short 500,000 through January 23, 1930. Mr. Cutten did not make a report of his position with F. B. Keech & Company, in May wheat, covering the period from January 17 to the 23rd, 1930.

Referring now to July wheat, with Bartlett-Frazier Company, in account No. 20, it shows a short position in July wheat of 500,000 bushels on February 14, 1930. This position was maintained through February 25, 1930. Mr. Cutten did not report that to the Grain Futures Administration. From April 3rd to April 8th, 1930, account No. 7, with Bartlett-
360 Frazier Company, showed a short position of 600,000 bushels. Mr. Cutten did not report that to the Grain Futures Administration.

This account, A. W. C., with F. B. Keech showed a short position in September wheat of 600,000 bushels on June 13th through June 17, 1930. They were not reported by Mr. Cutten. On Juy 19, 1930, the A. W. C. account with F. B. Keech showed a long position of 500,000 bushels December wheat. That was not reported by Mr. Cutten. The A. W. C. account with F. B. Keech & Company showed a short position of 650,000 bushels, December wheat, on September 15, 1930. None of these open positions were reported by either Mr. Cutten or the commission houses.

During the year 1931 these accounts with the various grain firms were so handled as to keep them all below the 500,000 mark. I do not think any account reached 500,000 during the year 1931, except the accounts that were reported. There were some instances of reports.

On April 5, 1930, the combined accounts, Exhibit 411, showed a long position of 1,200,000 bushels, wheat futures. That long position was through four commission firms and seven accounts. During the next seventeen trading days, up to April 26th the combined accounts had a short position of 1,410,000 bushels, all wheat futures combined, and the net sales of wheat futures during that period were 2,610,000 bushels. The closing price of July wheat futures on the Chicago Board of Trade on April 5, 1930 was $1.17-1/4 to $1.17. On April 26th the closing price of the same future was $1.04-5/8 to $1.04-3/4; the price decline was slightly in excess of 12 cents per bushel. I have caused to be prepared a chart showing these transactions about which I have just tes-

tified. (Tr. 923, 924, 925, 926 and 927) Exhibit 412 is
361 based upon the figures that I have just given testimony about. That represents, in graph, or chart form, the same figures.

Mr. Tierney: At this time the complainant offers in evidence EXHIBIT 412, identified by the witness.

The Referee: Is there an objection?

Mr. Taylor: No, no objection.

The Referee: Complainant's Exhibit 412 may be received.

The accounts included in Exhibit 411 had a net short position on June 12th of 2,475,000 bushels in wheat futures. (Tr. 928) The short position of these accounts on June 21, 1930 was 7,125,000 bushels. There were seven accounts in which the net short positions on June 12, 1930 was carried. They were carried through six commission firms. The position of 7,125,000, attained on June 21, 1930, was carried in six commission firms, and scattered through 14 accounts. During this period of eight trading days, June 12th to June 21st, 1930, the Cutten accounts, as shown by Exhibit 411 had net sales of 4,650,000 bushels. On June 12, 1930, the closing price of the July wheat future was $1.03 to $1.03-1/8. On June 21, 1930, the closing price of the same future was 92-1/2 to a quarter. That is a decline of about 10-1/2 cents per bushel. I have prepared a graph or chart of these transactions based upon records in evidence. Exhibit 413 is the graph I caused to be prepared.

Mr. Tierney: We offer, at this time, EXHIBIT 413.

The Referee: Is there an objection?

Mr. Taylor: Well, the same objection as to relevancy, and we don't question the correctness of these graphs, or that
362 they are a reflection of the figures which Mr. Bagnell has put in testimony about. (Tr. 929 and 930)

The Referee: Complainant's Exhibit 413 may be received. (Respondent excepts.)

On November 28, 1930, the accounts included in Exhibit 411 had a short position of 300,000 bushels of wheat futures combined. On December 31, 1930 the accounts, as shown by Exhibit 411, had a short position of 3,065,000 bushels. There were twenty-eight trading days in that period from November 28th, 1930 to December 31st, 1930, and during those 28 days the account had net sales of 2,765,000 bushels, increasing the short position to 3,065,000. (Tr. 931) On November 28, 1930, the closing price of July wheat futures on the Chicago Board of Trade was 74-1/2 cents. (Tr. 932)

Exhibit 414 is an exhibit to which I have been referring with respect to the prices of wheat futures. And this exhibit is the statistical bulletin No. 41, dated September 19, 1933, of the United States Department of Agriculture Wheat Futures, Volume of Trading, Open Commitments and prices, from January 2, 1930, to December 31, 1932. And on December 31, 1930, the closing price of the same future was 62-1/2 to 62-5/8. That is a decline of approximately 12 cents per bushel. On January 14, 1931, July wheat futures ranged between 66-3/4 cents low and 69-3/8 cents high, a range of something less than 3 cents a bushel. Exhibit 411 shows that these accounts had purchases of 1,000,000 bushels of July wheat on January 14, 1931, changing from the short position of 2,300,000 to a short position of 1,300,000. I have prepared a chart based upon the figures and records in evidence here showing the trend of price and trade during this period, from
363 November 28, 1930 to December 31, 1930.

Mr. Tierney: We offer at this time COMPLAINANT'S EXHIBIT NO. 415.

Mr. Taylor: No objection.

The Referee: Complainant's Exhibit 415 will be received. (Tr. 933 and 934)

On February 10, 1931, the accounts included in Exhibit 411 had a short position of 1,945,000 bushels. On April 2 the short position of the combined account was 5,920,000 bushels. That is an increase of 3,975,000 representing net sales of that amount. On February 10, 1931, July wheat futures on the Chicago Board of Trade closed at 71-5/8 to 71-1/2. On April 2, 1931, the closing price of the same future was 59-3/4 to 59-7/8, representing a decline of about 11 cents per bushel. I have prepared a chart showing the trend of prices in this future in the Cutten transactions, based upon the books and records in evidence, from February 11 to April 2, 1931. These accounts were short the same quantity on February 11th that they were on February 10th, that is, 1,945,000 bushels.

Mr. Tierney: Complainant offers in evidence EXHIBIT 416, identified by the witness.

Mr. Taylor: No objection.

The Referee: It will be received.

On August 8, 1930, according to Exhibit 411, these accounts had a long position of 4,100,000 bushels. On August 14th the accounts had a short position of 1,000,000 bushels. (Tr. 935 and 936) That represents net sales of 5,100,000 bushels, during that period of six trading days. On August 8, 1930, De-

cember wheat closed on the Chicago Board of Trade at
364 $1.02-1/4 to $1.02. On August 14th the same future
closed at 95-1/4 cents to 95-1/8 cents. That is a decline of about seven cents per bushel. In that period, August 8th to 14th, there were six trading days. I have prepared a graph, based upon my figures in evidence and the prices which I have quoted from Exhibit 414. (Tr. 937) Exhibit 417 is the exhibit I had prepared.

Mr. Tierney: Complainant offers in evidence EXHIBIT 417.

The Referee: It will be received.

These accounts included in Exhibit 411 had a net long position of 2,845,000 bushels on November 12, 1931. (Tr. 938) There were net sales of 6,805,000 bushels during 13 trading days, November 12, 1931 to November 27, 1931, reversing the position from 2,845,000 bushels long to 3,960,000 bushels short. On November 12, 1931, the closing price of the May wheat future on the Chicago Board of Trade was 66 to 65-7/8 cents. On November 27, 1931 the closing price of the same future was 55-5/8 to three-quarters cents, a decline of something over ten cents per bushel. I have caused to be prepared a chart or a graph, based upon the facts in evidence and the prices as I have quoted them from Exhibit 414. Exhibit 418 is the chart I have reference to.

Mr. Tierney: Complainant offers EXHIBIT 418, identified by the witness.

The Referee: It may be received. (Tr. 939)

Cross-Examination.

On June 12, 1930 the total open commitments in July wheat on the Chicago Board, as shown by the bulletin from which I have been testifying, were 57,144,000 bushels. That is on page 73, table 29. (Tr. 941) I would not say that the short position of the alleged Cutten accounts was the cause of
365 the decrease or the lowering of the price of the commodity in trade. I would say that any heavy selling, to my mind, tends to depress the price of grain, but I would not say that that was the cause. Other factors to take into consideration to determine what was the cause of either an increase or decrease in the market price of a given option are almost innumerable; weather conditions, war scares, grasshoppers in the Argentine. I could sit up here and from looking over gossip sheets recite factors all day. Control of acre-

age, public participation in the market, the general monetary conditions, the basic question of supply and demand, all would be factors. (Tr. 942) The foreign markets of Liverpool, Winnipeg, and Buenos Aires under nearly all conditions would be factors, I think. If the country was on a domestic basis, they would not be so much a factor as if it were on a world basis, but ordinarily they would be a factor. The domestic markets of Kansas City, Minneapolis, and Duluth would be factors only to a very limited extent. Those domestic markets other than Chicago follow Chicago almost exactly, with the freight differentials. Warehousing facilities at certain seasons, particularly at the end of delivery periods, would be a factor. As the dates approach for deliveries, they are a factor. Freight rates and tariffs are factors. (Tr. 943)

So that these charts per se in no way indicate these other elements which I have just admitted are factors in my presentation of the cause or the effect of this selling on the part of the alleged Cutten accounts. The participation on the part of any Government instrumentality at this time, either in buying or selling of wheat, would be a factor in the creating of the daily market price of the option in which the 366 trades were made, particularly if that government participation were aimed and directed toward a certain end. For instance, if that participation was done with the idea of holding the price up and there was enough money behind it, it would probably hold it up for a certain length of time.

Q. And if you were informed that a quasi governmental corporation participated in the market, in various options, to the extent of purchasing 538,337,000 bushels of wheat during the period beginning May, 1930, and continuing to March 3, 1933, and during the same period purchasing 370,000,000 bushels of cash wheat, making a total participation on the part of this given corporation during that period of 908,615,449 bushels, would that factor in any way be reflected or indicated on these charts which you have prepared and which have been introduced in evidence?

A. That factor has not been considered in the preparation of these charts. (Tr. 944, 945, and 946)

The Referee: Complainant's Exhibit 414 will be received.

Mr. Taylor: Q. In other words, Mr. Bagnell, you are not contending, or rather, I appreciate that you are not contending, you are only testifying, but you are not stating these figures or advancing the evidence or the testimony that you have introduced here as indicating that the cause of the de-

crease in the value of the given option shown by these charts was brought about by the sale of this amount of wheat by Mr. Cutten?

Mr. Tierney: Mr. Taylor, we will stipulate that that is not our contention.

Mr. Taylor: All right.

367 Mr. Tierney: Our contention is merely that with these tremendous short sales of the Cutten accounts, by strange coincidence, the market on those days took sudden drops.

Mr. Taylor: Yes.

Mr. Tierney: That is all.

During this period, covered by these charts and my testimony, there was a world wide depression in force, and a constantly decreasing reduction in the price not only of securities, commodities, but of all articles and of all values. (Tr. 947 and 948)

Complainant Rests.

Mr. Taylor: But before asking for adjournment, I would like to make one or two suggestions here in the way of straightening out the respondent's exhibits and make one explanation of a situation which we find in the record. It seems that Respondent's Exhibit K has been marked for identification but has not been offered in evidence or admitted in evidence. We ask that it at this time be done.

The Referee: Any objection?

Mr. Tierney: Yes. We object to Exhibit K for the reason that Exhibit K is a letter of date October 24, 1932, and it is incompetent, irrelevant and immaterial. It does not tend to disprove any claim of this record upon the part of the Government as against Mr. Cutten for the reason that the transactions and violations with which Mr. Cutten is charged occurred in the years 1930 and 1931. This letter is of date October 24, 1932, and offers no excuse and is not a waiver in any manner of any of the violations of the Grain Futures Act committed by Mr. Cutten in 1930 and 1931.

368 The same is, further, not proper cross-examination, it is not a matter gone into with the witness Mr. Fitz by whom the same was identified on direct examination; and for the further reason that the regulation referred to in Respondent's Exhibit K and its suspension as of October 24, 1932 offers no defense and no excuse for the violations during the years 1930 and 1931, as shown by this record; and the same is otherwise incompetent, irrelevant and immaterial.

The Referee: Objection overruled. Respondent's Exhibit K will be received.

(Complainant excepts.)

Mr. Taylor: * * * We wish, at this time, to withdraw our objections to complainant's Exhibits 404 and 405, in so far as those objections are based upon grounds of authenticity, genuineness and identification. (Tr. 953)

* * * * * *

I would like the hearing continued until tomorrow at any hour to be fixed by the Referee, at which time we will have certain motions that we would like to present to the Referee.

The Referee: All right. We will adjourn until ten o'clock tomorrow morning.

(Whereupon, the hearing adjourned at 12:30 P. M.) (Tr. 955)

Morning Session.

10:15 A. M. May 24, 1934.

Mr. Taylor: Mr. Referee, we would like to have the record show that the respondent rests.

Mr. Tierney: Mr. Referee, counsel for respondent and complainant's counsel have entered into a stipulation which will be a part of the record in this case with respect to 369 returning the exhibits that have been introduced and I will read this into the record as well, insofar as Mr. Kirkland, who represents the various grain firms is present at this hearing. The idea of this stipulation is to save inconvenience to the various grain firms and to yourself, the Commission and the respective parties by avoiding the return of the bulky and cumbersom exhibits that have been introduced here. I am satisfied we have Mr. Kirkland's assurance that the original exhibits will be kept intact by the various grain firms so that in the event either the complainant or the respondent desires to make photostatic copies of any portions of the exhibits, in accordance with this stipulation which I shall read, they shall be available. The stipulation is as follows, Mr. Kirkland:

It is hereby stipulated and agreed by and between the complainant and respondent herein, by their respective counsel, that the books of account and records of all of the various grain firms heretofore received in evidence herein be not returned as part of the record in this cause by the Referee to the Commission designated under the Grain Futures Act.

It is further stipulated that the correctness of complain-

ant's exhibits Numbers 407 to 411 inclusive is not to be questioned by the respondent except only in such case and instance as respondent may produce before the Commission photostatic copies of parts of the pages of books and records of accounts of the various grain firms which have been introduced and
370 accepted in evidence as may be used by respondent to disclose errors, if any, in said complainant's exhibits Numbers 407 to 411 both inclusive.

It is further stipulated and agreed that both complainant and respondent shall submit this cause to the Commission by written brief and argument and oral argument. Complainant is to prepare and serve upon respondent abstract, written brief and argument on or before August 1, 1934, and respondent shall have forty-five (45) days after service of such abstract, brief and argument, upon him or his counsel, by complainant in which to prepare and serve upon complainant an additional abstract and his written brief and argument in answer thereto. Complainant shall have twenty days (20) within which to prepare and serve upon respondent or his attorney written brief and argument by way of reply. It is understood that the time at which said cause is to be orally argued is entirely within the discretion and judgment of the Commission.

It is further stipulated that both complainant and respondent may include in their respective abstracts such photostatic copies of the books and records of the grain firms in evidence as either may deem necessary to the proper presentation of their respective causes to said Commission, which photostats if and when so incorporated in any of such abstracts shall
371 be a part of the record in said cause. In event, however, that either complainant or respondent shall deem it necessary to include in their respective abstracts any photostatic copies of the books and records in evidence or parts thereof he will serve upon and deliver to counsel for the opposite party like photostats at least ten days prior to the date of serving their respective abstracts in which said photostats are to be included.

Nothing hereinabove contained, however, is to be by either complainant or respondent construed or interpreted as a limitation or restriction of any character as against either of the parties to this cause to make and draw such inferences from the evidence including said records and books of accounts adduced in said cause and presented before said Commission as they may see fit."

Mr. Tierney: This stipulation has been reduced to writing and signed by attorneys for both complainant and respondent.

And may we have your assurance, Mr. Kirkland, insofar as this is really an accommodation to the various commission firms, that you will caution your clients and see that these books are filed so that these books may be obtained. (Tr. 956, 957, 958, 959 and 960)

Mr. Tierney (Continuing): If that is agreeable to the Referee, it will save a lot of trouble and time and give us a better record here.

The Referee: All right, sir.

Mr. Taylor: Will you make that stipulation a part of the record?

372 Mr. Tierney: Yes. This stipulation which I have read—the original—I want to be made a part of the record in this case.

Mr. Taylor: If the Referee please, we have certain motions which we would like to have made a part of the record, which are, especially our motion to strike complainant's evidence, of considerable length. If it is agreeable to the Referee and to Mr. Tierney, we will be perfectly satisfied simply to have these motions filed, made a part of the record, and go up with the case to the Commission, as was the arrangement with reference to our original motion to quash.

We are presenting a renewal of our motion to quash. At the close of complainant's case, we are presenting a second motion to strike complainant's evidence, which is made a part of and collateral with the motion to strike complainant's evidence which was filed with the record immediately prior to the testimony of Mr. Bagnell, and then we are filing a motion to dismiss the complaint. I am perfectly willing to read these, if the Referee feels they should be read into the record; or, if the Referee feels he should pass upon them. We have no idea here other than to save the responsibility which we may be imposing upon you. We assume that it is a matter which ultimately must go before the Commission, and inasmuch as we arrived at this arrangement on our original motion to quash, it seems to us it may be in order to have the same procedure followed with reference to these. What is your view on that Mr. Tierney? Have you any objection to that procedure being followed?

Mr. Tierney: That they be submitted with the entire record?

Mr. Taylor: And go up with the case.

Mr. Tierney: Perfectly satisfactory.

Mr. Taylor: In that case, we will simply make these a part of the record. (Tr. 961 and 962)

373 MOTION TO STRIKE COMPLAINANT'S EVIDENCE.

Now Comes the respondent, Arthur W. Cutten, by Orville J. Taylor and James J. Magner, his attorneys, at the close of all of the evidence received in the above entitled cause and moves this Honorable Commission that the complainant's exhibits hereinafter enumerated and the testimony in connection therewith be stricken from the record on the grounds, general and special, hereinafter assigned, as follows:

1. That complainant's Exhibits 1-418, inclusive, and the testimony in connection therewith, be stricken from the record on the following grounds:

(a) That they and it are concerned solely with transactions occurring during the years 1930 and 1931, or years prior thereto, which are past transactions now closed and not in existence, and that said exhibits and said evidence in connection therewith do not pertain to continuing and existing conditions subject to the jurisdiction of this tribunal under the authority of the Grain Futures Act, 1922.

(B) That the sections of the Grain Futures Act, 1922, under authority of which the said exhibits and the said evidence have been placed in the record, infringe the Constitution of the United States in that they deprive the respondent of his right of trial by jury; that the said sections are in violation of the due process clause of the Constitution; and that
374 the said sections confer upon a Commission created solely for administrative purposes powers and functions which under the Constitution are reposed in and especially reserved for the Judiciary.

(c) That said exhibits and said evidence pertain to transactions which occurred three years prior to the bringing of the complaint herein, and that they are introduced in support of charges which after such lapse of time are barred to the complainant herein under the doctrine of laches, and which said complainant is equitably estopped from prosecuting.

2. That complainant's Exhibits 3 and 4 (being photostatic copies of records of C. D. Robbins & Company), and all testimony in connection therewith, be stricken from the record on the following grounds:

(a) That they and it are not relevant to the allegations of the complaint in that they neither establish nor tend to establish any conspiracy to conceal the transactions with which they are concerned from the Grain Futures Administration.

(b) That they and it are not relevant to the allegations of the complaint in that they neither establish nor tend to establish a failure to make reports or the making of false reports to the Grain Futures Administration in connection with the transactions with which they are concerned

375 (c) That they and it are not relevant to the allegations of the complaint in that said exhibits show upon their face that they are the accounts of others than the respondent herein and that there has been no showing by the complainant that they are accounts owned or controlled by said respondent.

(d) That in the absence of a showing that said exhibits relate to accounts owned or controlled by the respondent or a showing of consent, they are confidential and privileged under Section 4 of the Rules and Regulations with respect to contract markets promulgated by the Secretary of Agriculture under said Grain Futures Act, 1922.

3. That complainant's Exhibits 5, 6, 7, 8 and 9 (being "street books" of Uhlmann & Company), Exhibit 10 (being the grain ledger of said company), and the testimony in connection therewith, in so far as they and it are concerned with Account 57 Special A, and Exhibit 12 (being one sheet of the financial ledger of said company relating to said account), and the testimony in connection therewith, be stricken from the record on the following grounds:

(a) That they and it are not relevant to the allegations of the complaint in that they neither establish nor tend to establish a conspiracy to conceal from the Grain Futures Administration the transactions with which they are concerned.

376 (b) That they and it are not relevant to the allegations of the complaint in that they neither establish nor tend to establish a failure to report or the making of false reports to the Grain Futures Administration.

(c) That they and it are not relevant to the allegations of the complaint in that they neither establish nor tend to establish that said Account 57 Special A was owned or controlled by the respondent herein.

(d) That in the absence of a showing that said account was owned or controlled by the respondent herein, or a showing of consent, said exhibits, in so far as they relate to said account, are confidential and privileged under Section 4 of the Rules and Regulations with respect to contract markets promulgated by the Secretary of Agriculture under the Grain Futures Act, 1922.

4. That Complainant's Exhibits 5, 6, 7, 8, 9 and 10 (as above described), and the testimony in connection therewith, in so far as they and it are concerned with Account 57 Special, and Exhibit 11 (being five sheets of the financial ledger of Uhlmann & Company relating to Account No. 57 Special), and the testimony in connection therewith, be stricken from the record on the following grounds:

377 (a) That they and it are not relevant to the allegations of the complaint in that they neither establish nor tend to establish a conspiracy to conceal from the Grain Futures Administration the transactions with which they are concerned.

(b) That they and it are not relevant to the allegations of the complaint in that they neither establish nor tend to establish a failure to report or the making of false reports to the Grain Futures Administration.

5. That complainant's Exhibit 14 (being a letter to the Grain Futures Administration identifying certain accounts carried with the Uhlmann Grain Company) be stricken from the record on the ground that the testimony in connection therewith establishes the fact that it was executed by one having no knowledge of the matters therein referred to apart from that gained from the books and records introduced in evidence by the complainant

6. That complainant's Exhibits 19, 21, 22 and 22-A (being the "Street books" of Keech & Company), and the testimony in connection therewith, be stricken from the record on the ground that they and it are not relevant to the allegations of the complaint in that they are concerned with transactions in corn futures and that there are no allegations as to such futures in the said complaint.

7. That complainant's Exhibits 16, 17, 18, 19, 19-A-19-M, inclusive, and 20 (being the "street books" of Keech &

378 Company), and the testimony in connection therewith, in so far as they and it relate to accounts L, E. M. L. Cutten, 97, R. J. Cutten, Maude Cutten, and Exhibits 24, 25, 26, 27 and 28 (being the financial ledger sheets of said company relating to accounts L, E. M. L. Cutten, 97, R. J. Cutten and Maude Cutten, respectively) and exhibits 29, 30, 31, 32 and 33 (being grain ledger sheets of said company relating to accounts 97, L. R. J. Cutten, Maude Cutten, and E. M. L. Cutten, respectively), Exhibits 35, 36, 37, 38, 39 and 40 (being letters to said company guaranteeing accounts L, R. J. Cutten, Maude Cutten and E. M. L. Cutten, respectively), and Exhibit 41

(being a letter to said company directing transfer of profits of Maude Cutten account to A. W. C. account), and the testimony in connection therewith, be stricken from the record on the following grounds:

(a) That they and it are not relevant to the allegations of the complaint in that they neither establish nor tend to establish a conspiracy to conceal from the Grain Futures Administration the transactions with which they are concerned.

(b) That they and it are not relevant to the allegations of the complaint in that they neither establish nor tend to establish a failure to report or the making of false reports to the Grain Futures Administration.

(c) That they and it are not relevant to the allegations of the complaint in that they neither establish nor tend to establish that said accounts were owned or controlled by the respondent herein.

379 (d) That in the absence of a showing that said accounts were owned or controlled by the respondent herein or a showing of consent, said exhibits and the testimony in connection therewith, in so far as they and it relate to said accounts, are confidential and privileged under Section 4 of the Rules and Regulations with respect to contract markets promulgated by the Secretary of Agriculture under the Grain Futures Act, 1922.

8. That complainant's Exhibits 16, 17, 18, 19, 19-A-19-M, inclusive, and 20 (as above described), and the testimony in connection therewith, in so far as they and it relate to the account of Arthur W. Cutten, and Exhibit 23 (being four sheets of the financial ledger of said company relating to the account of Arthur W. Cutten), and Exhibit 34 (being five sheets of the grain ledger of said company relating to the account of Arthur W. Cutten) and the testimony in connection therewith, be stricken from the record on the following grounds:

(a) That they and it are not relevant to the allegations of the complaint in that they neither establish nor tend to establish a conspiracy to conceal from the Grain Futures Administration the transactions with which they are concerned.

(b) That they and it are not relevant to the allegations of the complaint in that they neither establish nor tend to establish a failure to report or the making of false reports to the Grain Futures Administration.

380 9. That complainant's Exhibits 42, 43, 44, 45, 46, 47, 48, 49 50 (being the "street books" of Bartlett-Frazier &

Company), 51 (being the grain ledger of said company), 52, 53 and 54, and the testimony in connection therewith, in so far as they relate to accounts D. S., Maude Cutten, and Mrs. No. 7, and Exhibits 55 and 56 (being letters to said company guaranteeing accounts Maude Cutten and D. S., respectively), and the testimony in connection therewith, be stricken from the record on the following grounds:

(a) That they and it are not relevant to the allegations of the complaint in that they neither establish nor tend to establish a conspiracy to conceal from the Grain Futures Administration the transactions with which they are concerned.

(b) That they and it are not relevant to the allegations of the complaint in that they neither establish nor tend to establish a failure to report or the making of false reports to the Grain Futures Administration.

(c) That they and it are not relevant to the allegations of the complaint in that they neither establish nor tend to establish that said accounts were owned or controlled by the respondent herein.

(d) That in the absence of a showing that said accounts were owned or controlled by the respondent herein or a showing of consent, said exhibits and the testimony in connec-
380½ tion therewith, in so far as they and it relate to said accounts, are confidential and privileged under Section 4 of the Rules and Regulations with respect to contract markets promulgated by the Secretary of Agriculture under the Grain Futures Act, 1922.

10. That complainant's Exhibits 42-54, inclusive (as above described), and the testimony in connection therewith, in so far as they or it relate to accounts No. 20 and No. 7, be stricken from the record on the following grounds:

(a) That they and it are not relevant to the allegations of the complaint in that they neither establish nor tend to establish a conspiracy to conceal from the Grain Futures Administration the transactions with which they are concerned.

(b) That they and it are not relevant to the allegations of the complaint in that they neither establish nor tend to establish a failure to report or the making of false reports to the Grain Futures Administration.

11. That complainant's Exhibits 59 (being the grain ledger of Kidston & Company re Account 59) and 60 (being financial ledger sheet of said company re Account 59) and the testimony in connection therewith, and Exhibit 61 (being a page of the "street book" of said company) and 62 (being a

letter to said company guaranteeing Account 59), and the testimony in connection therewith, in so far as they and it relate to account No. 59, be stricken from the record on the following grounds:

381 (a) That they and it are not relevant to the allegations of the complaint in that they neither establish nor tend to establish a conspiracy to conceal from the Grain Futures Administration the transactions with which they are concerned.

(b) That they and it are not relevant to allegations of the complaint in that they neither establish nor tend to establish a failure to report or the making of false reports to the Grain Futures Administration.

(c) That they and it are not relevant to the allegations of the complaint in that they neither establish nor tend to establish that said Account 59 was owned or controlled by the respondent herein.

(d) That in the absence of a showing that said Account 59 was owned or controlled by the respondent herein, or a showing of consent, said exhibits and the testimony in connection therewith, in so far as they and it relate to said Account 59, are confidential and privileged under Section 4 of the Rules and Regulations with respect to contract markets promulgated by the Secretary of Agriculture under the Grain Futures Act, 1922.

12. The complainant's Exhibits 57 (being six pages of the grain ledger of Kidston & Company re Account No. 8), 58 (being seven pages of the financial ledger of said company re Account No. 8), and 61 (as above described) and the tes-

382 timony in connection therewith, in so far as they and it relate to Account No. 8, be stricken from the record on the following grounds:

(a) That they and it are not relevant to the allegations of the complaint in that they neither establish nor tend to establish a conspiracy to conceal from the Grain Futures Administration the transactions with which they are concerned.

(b) That they and it are not relevant to the allegations of the complaint in that they neither establish nor tend to establish a failure to report or the making of false reports to the Grain Futures Administration.

13. The complainant's Exhibits 63 (being the "street book" of Jackson Brothers, Boesel & Company), and 64 (being the grain ledger of said company) and the testimony in connection therewith, in so far as they and it relate to ac-

counts L. F. C., and R. Cutten, and Exhibits 71 and 72 (being financial ledger sheets of said company re accounts L. F. C., and R. Cutten, respectively), and the testimony in connection therewith, be stricken from the record on the following grounds:

(a) That they and it are not relevant to the allegations of the complaint in that they neither establish nor tend to establish a conspiracy to conceal from the Grain Futures Administration the transactions with which they are concerned.

(b) That they and it are not relevant to the allega-
383 tions of the complaint in that they neither establish nor tend to establish a failure to report or the making of false reports to the Grain Futures Administration.

(c) That they and it are not relevant to the allegations of the complaint in that they neither establish nor tend to establish that said accounts were owned or controlled by the respondent herein.

(d) That in the absence of a showing that said accounts were owned or controlled by the respondent herein or a showing of consent, said exhibits and the testimony in connection therewith, in so far as they and it relate to said accounts, are confidential and privileged under Section 4 of the Rules and Regulations with respect to contract markets promulgated by the Secretary of Agriculture under the Grain Futures Act, 1922.

14. That complainant's Exhibits 63 and 64 (as above described) and the testimony in connection therewith, in so far as they and it relate to Accounts 40, C-209, C-209 Special, C-210, C-211 and C-212, and Exhibits 65, 66, 67, 68, 69 and 70 (being financial ledger sheets of Jackson Brothers, Boesel & Company re Accounts 40, C-209, C-209 Special, C-210, C-211 and C-212, respectively), and the testimony in connection therewith be stricken from the record on the following grounds:

(a) That they and it are not relevant to the allegations of the complaint in that they neither establish nor tend to
384 establish a conspiracy to conceal from the Grain Futures Administration the transactions with which they are concerned.

(b) That they and it are not relevant to the allegations of the complaint in that they neither establish nor tend to establish a failure to report or the making of false reports to the Grain Futures Administration.

15. That complainant's Exhibits 73 (being an identifica-

tion of the ownership of Accounts 40, C-209, C-209 Special, C-210, C-211, C-212, L. F. C., and R. Cutten, as carried with Jackson Brothers, Boesel & Company) and 74 (being an identification of Accounts A. W. C., C. W. A., 209, 785, S. Special, R. J. C., Maude Cutten, Paul C. Bloomer and 787), and the testimony in connection therewith, be stricken from the record on the ground that there has been no showing that the documents constituting said exhibits were executed by persons having knowledge with respect to the matters therein referred to other than that gained from the books and records introduced in evidence by the complainant.

16. That complainant's Exhibits 75, 76 and 77 (being "street books" of Clement Curtis & Company) and the testimony in connection therewith, in so far as they and it refer to accounts Maude Cutten, R. J. C., S. Special, 785, 209, C. W. A., Paul C. Bloomer and 787, and Exhibits 81, 83, 85, 87, 89, 91 (being grain ledger sheets of said company re accounts Maude Cutten, R. J. C., S. Special, 785, 209 and C. W. A., respectively), and exhibits 82, 84, 86, 88, 90 and 92
(being financial ledger sheets of said company re accounts
385 Maude Cutten, R. J. C., S. Special, 785, 209 and C. W. A., respectively), and the testimony in connection therewith, be stricken from the record on the following grounds:

(a) That they and it are not relevant to the allegations of the complaint in that they neither establish nor tend to establish a conspiracy to conceal from the Grain Futures Administration the transactions with which they are concerned.

(b) That they and it are not relevant to the allegations of the complaint in that they neither establish nor tend to establish a failure to report or the making of false reports to the Grain Futures Administration.

(c) That they and it are not relevant to the allegations of the complaint in that they neither establish nor tend to establish that said accounts were owned or controlled by the respondent herein.

(d) That in the absence of a showing that said accounts were owned or controlled by the respondent herein or a showing of consent, said exhibits and the testimony in connection therewith, in so far as they and it relate to said accounts, are confidential and privileged under Section 4 of the Rules and Regulations with respect to contract markets promulgated by the Secretary of Agriculture under the Grain Futures Act, 1922.

386 17. That complainant's Exhibits 75, 76 and 77 (as above described), and the testimony in connection there-

with, in so far as they and it refer to the account of Arthur W. Cutten and Exhibit 93 (being sheets of the grain ledger of Clement Curtis & Company re account of Arthur W. Cutten), and Exhibit 94 (being sheets of the financial ledger of said company re account of Arthur W. Cutten), and the testimony in connection therewith, be stricken from the record on the following grounds:

(a) That they and it are not relevant to the allegations of the complaint in that they neither establish nor tend to establish a conspiracy to conceal from the Grain Futures Administration the transaction with which they are concerned.

(b) That they and it are not relevant to the allegations of the complaint in that they neither establish nor tend to establish a failure to report or the making of false reports to the Grain Futures Administration.

18. That complainant's Exhibits 95 (being "street book" of William J. Springer) and 96 (being the financial ledger of William J. Springer) and 97 (being an identification of accounts carried with William J. Springer), and the testimony in connection therewith, in so far as they and it relate to Account No. 20, be stricken from the record on the following grounds:

(a) That they and it are not relevant to the allegations of the complaint in that they neither establish nor tend to
387 establish a conspiracy to conceal from the Grain Futures Administration the transactions with which they are concerned.

(b) That they and it are not relevant to the allegations of the complaint in that they neither establish nor tend to establish a failure to report or the making of false reports to the Grain Futures Administration.

(c) That they and it are not relevant to the allegations of the complaint in that they neither establish nor tend to establish that said Account No. 20 was owned or controlled by the respondent herein.

(d) That in the absence of a showing that said account No. 20 was owned or controlled by the respondent herein or a showing of consent, said exhibits and the testimony in connection therewith, in so far as they and it relate to said Account No. 20, are confidential and privileged under Section 4 of the Rules and Regulations with respect to contract markets promulgated by the Secretary of Agriculture under the Grain Futures Act, 1922.

19. That complainant's Exhibits 95, 96 and 97, (as above

described) and the testimony in connection therewith, in so far as they and it relate to Account No. 30, be stricken from the record on the following grounds:

(a) That they and it are not relevant to the allega-
388 tions of the complaint in that they neither establish nor tend to establish a conspiracy to conceal from the Grain Futures Administration the transactions with which they are concerned.

(b) That they and it are not relevant to the allegations of the complaint in that they neither establish nor tend to establish a failure to report or the making of false reports to the Grain Futures Administration.

20. That complainant's Exhibits 99-357, inclusive, (being reports to the Grain Futures Administration during the years 1926, 1927 and 1928 and letters with respect to said reports) and the testimony in connection therewith, be stricken from the record on the following grounds:

(a) That they and it are not relevant to the allegations of the complaint in that they are concerned solely with transactions which are closed and not in existence at the present time, and, therefore, are not transactions upon which evidence is admissible under the provisions of the Grain Futures Act, 1922.

(b) That they and it are not relevant to the allegations of the complaint in that said allegations concern themselves solely with transactions occurring during years 1930 and 1931, and that none of the transactions to which said exhibits refer, occurred in such years or continued in existence in such years.

389 (c) That they are not relevant to the allegations of the complaint in that they neither establish nor tend to establish a conspiracy to conceal transactions occurring during the years 1930 and 1931 from the Grain Futures Administration, as in said complaint alleged.

(d) That they are not relevant to the allegations in the complaint in that they neither establish nor tend to establish a failure to report or the making of false reports during the years 1930 and 1931, as in the said complaint alleged.

(e) That in the absence of a showing that they are relevant to the allegations of the complaint herein involved, said exhibits are privileged and confidential under Section 4 of the Rules and Regulations with respect to contract markets promulgated by the Secretary of Agriculture under the Grain Futures Act, 1922.

21. That complainant's Exhibits 358-405 (being certain letters, reports and telegrams during the years 1930 and 1931), inclusive, and the testimony in connection therewith, be stricken from the record on the ground that they and it are not relevant to the allegations in the complaint and that they neither establish nor tend to establish any of the allegations contained in said complaint.

21. That complainant's Exhibit 406 (being an identification of accounts A. W. C., M. C., E. M. L. C., L, 97, R. J. C., as carried with F. B. Keech and Company), and the tes-
390 timony in connection therewith, be stricken from the record on the ground that there has been no showing that the document constituting said exhibit was executed by one having knowledge with respect to the matters therein referred to other than that gained from the books and records introduced in evidence herein by the complainant.

22. That complainant's exhibit 407 (being an analysis of the Chicago wheat futures transactions and open commitments handled through certain accounts with certain grain commission firms), and exhibit 408 (being a summary of Exhibit 407), and the testimony in connection therewith, be stricken from the record on the following grounds:

(a) That they and it are not relevant to the allegations of the complaint in that there has been no sufficient showing that any of the said accounts referred to therein were owned or controlled by the respondent herein.

(b) That in the absence of a showing that said exhibits relate to accounts owned or controlled by the respondent or a showing of consent, they are confidential and privileged under Section 4 of the Rules and Regulations with respect to contract markets promulgated by the Secretary of Agriculture under said Grain Futures Act, 1922.

(c) That they and it are not relevant to the allegations in the complaint in that they neither establish nor tend to establish any of the allegations contained in said complaint.

391 24. That complainant's exhibit 409 (being an analysis of the Chicago wheat futures transactions in certain accounts with certain grain commission firms) and exhibit 410 (being a summary of exhibit 409) and exhibit 411 (being a combined summary of exhibits 407 and 409) and the testimony in connection therewith, be stricken from the record on the following grounds:

(a) That they and it are not relevant to the allegations of the complaint in that said exhibits show upon their face that

they are concerned with accounts of others than the respondent herein, and that said accounts were manifestly not owned or controlled by the respondent within the meaning of the Grain Futures Act, 1922, or the rules and regulations pursuant thereto.

(b) That in the absence of a showing that said exhibits are concerned with accounts owned or controlled by the respondent herein, or a showing of consent, said exhibits and the testimony in connection therewith, are confidential and privileged under Section 4 of the Rules and Regulations with respect to contract markets promulgated by the Secretary of Agriculture under said Grain Futures Act, 1922.

(c) That they and it are not relevant to the allegations in the complaint in that they neither establish nor tend to establish any of the allegations contained in said complaint.

392 25. That complainant's exhibits 412 to 418 inclusive (being charts showing certain transactions between certain dates) and the testimony in connection therewith be stricken from the record on the ground that they and it are not relevant to the allegations in the complaint in that they neither establish nor tend to establish any of the allegations contained in said complaint.

RENEWAL OF MOTION TO QUASH.

Now Comes Arthur W. Cutten, respondent herein, by Orville J. Taylor and James J. Magner, his attorneys, and hereby renews the respondent's motion to quash the complaint filed herein and moves the Honorable Commission that the complaint on which these proceedings are brought be quashed; that these proceedings, including the appointment of the Referee, the sending of notices under the complaint and any and all action heretofore taken and hereafter to be taken in respect to said "Complaint and Notice of Hearing under the Grain Futures Act," be held for naught, and in support of said motion assigns the following grounds:.

1. That the sections of the Grain Future Act of 1922, under which these proceedings are brought, insofar as those sections of said Act are relied upon to give validity and effect to these proceedings, infringe the Constitution of the United States in the following respects:

(a) That they deprive the respondent of his constitutional right to trial by jury.

(b) That they are in violation of the 5th Amendment
393 of said Constitution, in that they deprive a citizen of liberty and property without due process of law.

(c) That they are in violation of Article III of the Constitution in that they confer upon a commission created solely for administrative purposes power and and functions which are reposed in and are expressly reserved for the judiciary.

(d) That they constitute an unwarranted delegation of legislative power which by the Constitution is reposed in and expressly reserved for the Congress of the United States.

2. That the provisions of the Grain Futures Act of 1922, under authority of which said complaint has been instituted, were intended to be regulatory, remedial and preventive; that said complaint does not seek to remedy, regulate or curtail an existing violation, nor is it filed in connection with an attempt by the Secretary of Agriculture to curtail or police an existing violation, but contrariwise seeks to punish respondent for alleged past violations.

3. That the regulation with respect to which violations are charged was rescinded under date of October 24, 1932, and there being then pending against respondent no proceeding of any kind or character, this Commission is now without
394 power or authority in law to institute these proceedings and to punish respondent for violations alleged to have occurred prior to October 24, 1932.

MOTION TO DISMISS COMPLAINT.

Now Comes the respondent, Arthur W. Cutten, by Orville J. Taylor and James J. Magner, his attorneys, at the close of all of the evidence received in the above entitled cause, and moves this Honorable Commission that the complaint herein be dismissed, and in support of said motion the respondent assigns the following grounds:

1. That the sections of the Grain Futures Act of 1922 under authority of which this proceeding is alleged to have been instituted and carried on, infringe the Constitution of the United States in that they deprive the respondent of his right to trial by jury; the said sections are in violation of the due process clause of the Constitution; the said sections confer upon a commission created solely for administrative purposes, powers and functions which under the Constitution are reposed in and especially reserved for the judiciary.

2. That the regulation, the breach of which is charged, was suspended under date of October 24, 1932, and that, therefore, the complaint initiated herein is without warrant or authority of law.

3. That the Congress of 1922 intended to and did con-
395 fer upon the Commission a purely regulatory function and equipped the Secretary of Agriculture with a summary method for the exercise of the regulatory powers so conferred; that it is apparent both from the averments of the complaint and from the evidence herein received that this proceeding is punitive and not remedial.

4. That the complaint herein contains no allegations stating the complainant's belief in the existence of any present violations on the part of the respondent; the absence of such allegations is in itself a complete answer to all of the allegations of the present complaint.

5. That it appears from the face of the complaint herein filed that the Secretary of Agriculture does not entertain the belief necessary to and required by the statute for the support of a proceeding of this character.

6. That since the complaint herein does not pertain to, nor allege the continuation of an existing condition, it is therefore an improper complaint and one not within the statutory authority granted by the Grain Futures Act, 1922.

7. That the evidence presented by the complainant herein neither establishes nor tends to establish the allegations of the complaint insofar as they charge conspiracy and collusion by the respondent with various persons and grain firms of the Board of Trade for the purpose of concealing respondent's trading and position in the market from the Grain Futures Administration.

396 8. That the evidence herein neither establishes nor tends to establish the allegations of the complaint insofar as they charge that in furtherance of said alleged conspiracy, the respondent made inaccurate, incorrect and false reports of his position in the market to the Grain Futures Administration, and failed and refused to report accurately and correctly his position in the market and trades made by him in accordance with the Grain Futures Act, and the regulations pursuant thereto.

9. That the evidence neither establishes nor tends to establish the allegations of the complaint in so far as they charge that in furtherance of the said alleged conspiracy, the respondent herein caused and procured grain firms, and persons by and through whom trades were made, to keep false records and to make false reports to the Grain Futures Administration.

10. That the evidence herein neither establishes nor tends to establish the allegations of the complaint insofar as they charge that respondent caused persons and firms to split

and divide his account into several sections and to carry the same under various names and symbols for the purpose of concealing trades from the Grain Futures Administration.

11. That the evidence herein neither establishes nor tends to establish that respondent, during the period charged in the complaint, by means of false reports made by him-
397 self and by those with whom it is charged he conspired, and by means of false records, (kept by those through whom he traded) set up fictitious and "dummy" accounts for the purpose of concealing his trades and position in the market from the Grain Futures Administration.

12. That the evidence herein received establishes that the regulations with respect to which violations are charged are ambiguous and susceptible of more than one interpretation; the evidence further establishes that although representatives of the Grain Futures Administration undertook to advise the respondent of the existence of said rules and regulations and to furnish forms for compliance therewith, the advice with respect thereto was likewise ambiguous and susceptible of more than one interpretation.

13. That the evidence fails to establish the existence of any law or regulation which prevented the respondent or any other person from splitting accounts and/or the carrying of accounts under symbols.

14. That the evidence herein fails to establish the existence of any law or regulation preventing the respondent or any other trader from opening and maintaining an account in the amount of 495,000 bushels, or any other amount less than 500,000 bushels.

15. That the evidence received herein fails to establish that the respondent had such control over accounts other than those owned by the respondent as under any law or
398 regulation then in existence would require him to combine them and report them with owned accounts.

16. That the evidence neither establishes nor tends to establish that the respondent either manipulated or attempted to manipulate the market price of grain.

17. That the evidence herein neither establishes nor tends to establish that the respondent refused to make reports at any time.

18. That the evidence received herein neither establishes nor tends to establish any intentional or planned violation of the Grain Futures Act, 1922, or the rules and regulations made pursuant thereto.

19. That the evidence received herein fails to establish the allegations of the complaint.

552 (EXHIBIT 407)

Detailed analysis of the books and records of the grain firms, through whom Mr. Cutten traded, showing transactions by day, by account, by firm, by future, with total open long and short positions. The tabulation includes only those accounts, carried under name, number and symbol, and definitely identified by documents in evidence, as those of Arthur W. Cutten. Material portions of which are as follows:

ANALYSIS BY DAYS ON WHICH CUTTEN REPORTED

(In thousands of bushels, i. e., "000" omitted)

Date	Firm	Account	Bought	Sold	Long	Short
1931	1931 July Wheat					
Jan., 5	Bartlett-Frazier Co.	No. 20				100
	Clement, Curtis & Co.	A W C				600
	Jackson Bros., Boesel & Co.	No. 40	300			175
	Jackson Bros., Boesel & Co.	C-209				40
	F. B. Keech & Co.	A W C				200
	James Kidston & Co.	No. 8	200		70	
	Uhlmann Grain Co.	57 Spl				495
	Total—		500	...	70	1,610
Jan. 6	Bartlett-Frazier Co.	No. 20				100
	Clement, Curtis & Co.	A W C				600
	Jackson Bros., Boesel & Co.	No. 40		60		235
	Jackson Bros., Boesel & Co.	C-209				40
	F. B. Keech & Co.	A W C				200
	F. B. Keech & Co.	L		200		200
	James Kidston & Co.	No. 8		200		130
	Uhlmann Grain Co.	57 Spl.				495
	Total—		...	460	...	2,000
Jan. 7	Bartlett-Frazier Co.	No. 20	100		...	...
	Clement, Curtis & Co.	A W C	280			320
	Jackson Bros., Boesel & Co.	No. 40				235
	Jackson Bros., Boesel & Co.	C-209				40
	F. B. Keech & Co.	A W C				200
	F. B. Keech & Co.	L				200
	James Kidston & Co.	No. 8				130
	Uhlmann Grain Co.	57 Spl.				495
	Total—		380	....	....	1,620

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ANALYSIS BY DAYS ON WHICH CUTTEN REPORTED (Continued)

(In thousands of bushels, i. e., "000" omitted)

Date	Firm	Account	Bought	Sold	Long	Short
1931	1931 July Wheat					
Jan. 16	Bartlett-Frazier Co.	No. 7		100		420
	Clement, Curtis & Co.	A W C		100		220
	Jackson Bros., Boesel & Co.	No. 40				400
	Jackson Bros., Boesel & Co.	C-209				40
	F. B. Keech & Co.	A W C				200
	F. B. Keech & Co.	L				200
	James Kidston & Co.	No. 8		100		330
	Uhlmann Grain Co.	57 Spl.		495		495
	Total		...	795	...	2,305
Jan. 19	Bartlett-Frazier Co.	No. 7				420
	Clement, Curtis & Co.	A W C				320
	Jackson Bros., Boesel & Co.	No. 40				400
	Jackson Bros., Boesel & Co.	C-209		125		165
	F. B. Keech & Co.	A W C				200
	F. B. Keech & Co.	L		200		400
	James Kidston & Co.	No. 8		95		450
	Uhlmann Grain Co.	57 Spl.				495
	Total—		...	420	...	2,850
Jan. 20	Bartlett-Frazier Co.	No. 7				420
	Clement, Curtis & Co.	A W C				320
	Jackson Bros., Boesel & Co.	No. 40				400
	Jackson Bros., Boesel & Co.	C-209				165
	F. B. Keech & Co.	A W C		100		300
	F. B. Keech & Co.	L	95			305
	James Kidston & Co.	No. 8	75			375
	Uhlmann Grain Co.	57 Spl.				495
	Total—		170	100	...	2,780
Jan. 24	Bartlett-Frazier Co.	No. 7				420
	Clement, Curtis & Co.	A W C				320
	Jackson Bros., Boesel & Co.	No. 40				400
	Jackson Bros., Boesel & Co.	C-209				165
	F. B. Keech & Co.	A W C		100		500
	F. B. Keech & Co.	L				205
	James Kidston & Co.	No. 8				375
	Uhlmann Grain Co.	57 Spl.				495
	Total—		...	100	...	2,880

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ANALYSIS BY DAYS ON WHICH CUTTEN REPORTED (Continued)

Date	Firm	Account	Bought	Sold	Long	Short
1931	1931 July Wheat (Continued)					
Jan. 26	Bartlett-Frazier Co.	No. 7				420
	Clement, Curtis & Co.	A W C				320
	Jackson Bros., Boesel & Co.	No. 40				400
	Jackson Bros., Boesel & Co.	C-209		300		465
	F. B. Keech & Co.	A W C				500
	F. B. Keech & Co.	L				205
	James Kidston & Co.	No. 8				375
	Uhlmann Grain Co.	57 Spl.				495
	Total—		...	300	...	3,180
Feb. 2	Bartlett-Frazier Co.	No. 7				420
	Clement, Curtis & Co.	A W C				320
	Jackson Bros., Boesel & Co.	No. 40				400
	Jackson Bros., Boesel & Co.	C-209				465
	F. B. Keech & Co.	A W C				500
	F. B. Keech & Co.	L				205
	James Kidston & Co.	No. 8		200		475
	Uhlmann Grain Co.	57 Spl.				495
	Total—		....	200	....	3,280
Feb. 5	Bartlett-Frazier Co.	No. 7				420
	Clement, Curtis & Co.	A W C				320
	Jackson Bros., Boesel & Co.	No. 40				400
	Jackson Bros., Boesel & Co.	C-209				465
	F. B. Keech & Co.	A W C				500
	F. B. Keech & Co.	L	200			5
	James Kidston & Co.	No. 8	195			280
	Uhlmann Grain Co.	57 Spl.				100
	Total—		395	...	...	2,490
Feb. 7	Bartlett-Frazier Co.	No. 7				420
	Clement, Curtis & Co.	A W C				320
	Jackson Bros., Boesel & Co.	No. 40				400
	Jackson Bros., Boesel & Co.	C-209				465
	F. B. Keech & Co.	A W C				500
	F. B. Keech & Co.	L				5
	James Kidston & Co.	No. 8				280
	Uhlmann Grain Co.	57 Spl.		100		200
	Total—			100	...	2,590

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ANALYSIS BY DAYS ON WHICH CUTTEN REPORTED (Continued)

Date	Firm	Account	Bought	Sold	Long	Short
1931	1931 July Wheat (Continued)					
Feb. 9	Bartlett-Frazier Co.	No. 7				420
	Clement, Curtis & Co.	A W C	120			200
	Jackson Bros., Boesel & Co.	No. 40				400
	Jackson Bros., Boesel & Co.	C-209				465
	F. B. Keech & Co.	A W C	350			150
	F. B. Keech & Co.	L	5		...	...
	James Kidston & Co.	No. 8	125			155
	Uhlmann Grain Co.	57 Spl.				200
	Total—		600	...	...	1,990
Feb. 27	Bartlett-Frazier Co.	No. 7				300
	Bartlett-Frazier Co.	No. 20				100
	Clement, Curtis & Co.	A W C				200
	Jackson Bros., Boesel & Co.	No. 40				455
	Jackson Bros., Boesel & Co.	C-209				465
	F. B. Keech & Co.	A W C				350
	James Kidston & Co.	No. 8				100
	Uhlmann Grain Co.	57 Spl.				100
	Total—					2,070
Mar. 14	Bartlett-Frazier Co.	No. 7				300
	Bartlett-Frazier Co.	No. 20				100
	Clement, Curtis & Co.	A W C		100		290
	Jackson Bros., Boesel & Co.	No. 40				420
	Jackson Bros., Boesel & Co.	C-209				465
	F. B. Keech & Co.	A W C				350
	James Kidston & Co.	No. 8				200
	Uhlmann Grain Co.	57 Spl.				200
	Total—			100		2,325
Mar. 18	Bartlett-Frazier Co.	No. 7				300
	Bartlett-Frazier Co.	No. 20				100
	Clement, Curtis & Co.	A W C				290
	Jackson Bros., Boesel & Co.	No. 40				420
	Jackson Bros., Boesel & Co.	C-209				465
	F. B. Keech & Co.	A W C				350
	James Kidston & Co.	No. 8		100		300
	Uhlmann Grain Co.	57 Spl.				200
	Total—		...	100	...	2,425

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ANALYSIS BY DAYS ON WHICH CUTTEN REPORTED (Continued)

Date	Firm	Account	Bought	Sold	Long	Short
1931	1931 September Wheat					
March 18	Bartlett-Frazier Co.	No. 7				150
	Bartlett-Frazier	No. 20				350
	Clement, Curtis & Co.	A W C				270
	Jackson Bros., Boesel & Co.	No. 40				100
	F. B. Keech & Co.	A W C				200
	F. B. Keech & Co.	L				100
	James Kidston & Co.	No. 8				100
	Uhlmann Grain Co.	57 Spl.				400
	Total—		...	...	...	1,670
	1932 May Wheat					
Nov. 3	Bartlett-Frazier Co.	No. 7	100		500	
	Clement, Curtis & Co.	A W C			405	
	Clement, Curtis & Co.	C W A			400	
	Jackson Bros., Boesel & Co.	C-209 Spl.				70
	F. B. Keech & Co.	A W C	95		495	
	James Kidston & Co.	No. 8			485	
	Wm. J. Springer	No. 20			450	
	Wm. J. Springer	No. 30			300	
	Uhlmann Grain Co.	57 Spl.				200
	Total—		195	...	3,035	270
Nov. 20	Bartlett-Frazier Co.	No. 7		600		100
	Clement, Curtis & Co.	A W C		5	...	...
	Clement, Curtis & Co.	C W A		200		200
	Clement, Curtis & Co.	209-C		210		210
	Jackson Bros., Boesel & Co.	C-209 Spl.				70
	F. B. Keech & Co.	L			195	
	James Kidston & Co.	No. 8		90		90
	Wm. J. Springer	No. 20			15	
	Wm. J. Springer	No. 30		200	135	
	Uhlmann Grain Co.	57 Spl.				200
	Total—		...	1,305	345	870
Nov. 30	Bartlett-Frazier Co.	No. 7				400
	Clement, Curtis & Co.	C W A	205			290
	Clement, Curtis & Co.	209-C				410
	Jackson Bros., Boesel & Co.	C-209 Spl.	70		...	...
	F. B. Keech & Co.	A W C				400
	F. B. Keech & Co.	L			195	
	James Kidston & Co.	No. 8	200			90
	Wm. J. Springer	No. 20	50			335
	Wm. J. Springer	No. 30	150			15
	Uhlmann Grain Co.	57 Spl.				495
	Total—		675	...	195	2,435

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ANALYSIS OF DAYS ON WHICH CUTTEN REPORTED (Continued)

Date		Firm	Account	Bought	Sold	Long	Short
1931		1932 May Wheat (Continued)					
Dec.	1	Bartlett-Frazier Co.	No. 7	200			200
		Clement, Curtis & Co.	C W A	290		...	...
		Clement, Curtis & Co.	209-C	10			400
		F. B. Keech & Co.	A W C	200			200
		F. B. Keech & Co.	L			195	
		James Kidston & Co.	No. 8				90
		Wm. J. Springer	No. 20	350		15	
		Wm. J. Springer	No. 30				15
		Uhlmann Grain Co.	57 Spl	200			295
		Total—		1,250	...	210	1,200
Dec.	1	Bartlett-Frazier Co.	No. 7				200
		Clement, Curtis & Co.	209-C				400
		F. B. Keech & Co.	A W C				200
		F. B. Keech & Co.	L			195	
		James Kidston & Co.	No. 8		45		135
		Wm. J. Springer	No. 20			15	
		Wm. J. Springer	No. 30	20	20		15
		Uhlmann Grain Co.	57 Spl.				295
		Total—		20	65	210	1,245
Dec.	7	Bartlett-Frazier Co.	No. 7				200
		Clement, Curtis & Co.	209-C				400
		F. B. Keech & Co.	A W C				200
		F. B. Keech & Co.	L			195	
		James Kidston & Co.	No. 8				135
		Wm. J. Springer	No. 20			15	
		Wm. J. Springer	No. 30		200		215
		Uhlmann Grain Co.	57 Spl.				295
		Total—		...	200	210	1,445
Dec.	8	Bartlett-Frazier Co.	No. 7				200
		Clement, Curtis & Co.	209-C				400
		F. B. Keech & Co.	A W C				200
		F. B. Keech & Co.	L			195	
		James Kidston & Co.	No. 8	100			35
		Wm. J. Springer	No. 20			15	
		Wm. J. Springer	No. 30	300	100		15
		Uhlmann Grain Co.	57 Spl.				295
		Total—		400	100	210	1,145

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ANALYSIS BY DAYS ON WHICH CUTTEN REPORTED (Continued)

Date	Firm	Account	Bought	Sold	Long	Short
1931	1932 May Wheat (Continued)					
Dec. 9	Bartlett-Frazier Co.	No. 7				200
	Clement, Curtis & Co.	209-C				400
	F. B. Keech & Co.	A W C				200
	F. B. Keech & Co.	L			195	
	James Kidston & Co.	No. 8		300		335
	Wm. J. Springer	No. 20			15	
	Wm. J. Springer	No. 30		300		315
	Uhlmann Grain Co.	57 Spl.		200		495
	Total—		...	800	210	1,945
Dec. 14	Bartlett-Frazier Co.	No. 7				200
	Bartlett-Frazier Co.	No. 20	300		...	...
	Clement, Curtis & Co.	209-C				400
	F. B. Keech & Co.	A W C				200
	F. B. Keech & Co.	L			195	
	James Kidston & Co.	No. 8				335
	Wm. J. Springer	No. 20			15	
	Wm. J. Springer	No. 30	100			215
	Uhlmann Grain Co.	57 Spl.				495
	Total—		400	...	210	1,845
Dec. 16	Bartlett-Frazier Co.	No. 7	200		...	...
	Clement, Curtis & Co.	209-C	200			200
	F. B. Keech & Co.	A W C				200
	F. B. Keech & Co.	L			195	
	James Kidston & Co.	No. 8				335
	Wm. J. Springer	No. 20			15	
	Wm. J. Springer	No. 30				215
	Uhlmann Grain Co.	57 Spl.				495
	Total—		400	...	210	1,445
Dec. 18	Clement, Curtis & Co.	209-C				200
	F. B. Keech & Co.	A W C				200
	F. B. Keech & Co.	L			195	
	James Kidston & Co.	No. 8				335
	Wm. J. Springer	No. 20			15	
	Wm. J. Springer	No. 30				215
	Uhlmann Grain Co.	57 Spl	300			195
	Total—		300	...	210	1,145

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ANALYSIS BY DAYS ON WHICH CUTTEN REPORTED (Continued)

Date	Firm	Account	Bought	Sold	Long	Short
1931	1932 May Wheat (Continued)					
Dec. 19	Clement, Curtis & Co.	209-C				200
	F. B. Keech & Co.	A W C				200
	F. B. Keech & Co.	L			195	
	James Kidston & Co.	No. 8				335
	Wm. J. Springer	No. 20			15	
	Wm. J. Springer	No. 30				215
	Uhlmann Grain Co.	57 Spl				195
	Total—		...	...	210	1,145
Dec. 21	Clement, Curtis & Co.	A W C		300		300
	Clement, Curtis & Co.	209-C				200
	F. B. Keech & Co.	A W C				200
	F. B. Keech & Co.	L			195	
	James Kidston & Co.	No. 8				335
	Wm. J. Springer	No. 20			15	
	Wm. J. Springer	No. 30				215
	Uhlmann Grain Co.	57 Spl.		100		295
	Total—		...	400	210	1,545
Dec. 22	Bartlett-Frazier Co.	No. 7		200		200
	Clement, Curtis & Co.	A W C				300
	Clement, Curtis & Co.	209-C				200
	F. B. Keech & Co.	A W C				200
	F. B. Keech & Co.	L			195	
	James Kidston & Co.	No. 8				335
	Wm. J. Springer	No. 20			15	
	Wm. J. Springer	No. 30				215
	Uhlmann Grain Co.	57 Spl.				295
	Total—		...	200	210	1,745
Dec. 23	Bartlett-Frazier Co.	N. 7		100		300
	Clement, Curtis & Co.	A W C				300
	Clement, Curtis & Co.	209-C				200
	F. B. Keech & Co.	A W C				200
	F. B. Keech & Co.	L			195	
	James Kidston & Co.	No. 8				335
	Wm. J. Springer	No. 20			15	
	Wm. J. Springer	No. 30				215
	Uhlmann Grain Co.	57 Spl.				295
	Total—		...	100	210	1,845

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ANALYSIS BY DAYS ON WHICH CUTTEN REPORTED (Continued)

Date	Firm	Account	Bought	Sold	Long	Short
1931	1932 May Wheat (Continued)					
Dec. 24	Bartlett-Frazier Co.	No. 7				300
	Clement, Curtis & Co.	A W C				300
	Clement, Curtis & Co.	209-C				200
	F. B. Keech & Co.	A W C				200
	F. B. Keech & Co.	L			195	
	James Kidston & Co.	No. 8				335
	Wm. J. Springer	No. 20			15	
	Wm. J. Springer	No. 30		65		280
	Uhlmann Grain Co.	57 Spl.				295
	Total—		...	65	210	1,910
Dec. 29	Bartlett-Frazier Co.	No. 7				300
	Clement, Curtis & Co.	A W C				300
	Clement, Curtis & Co.	209-C				200
	F. B. Keech & Co.	A W C				200
	F. B. Keech & Co.	L			195	
	James Kidston & Co.	No. 8		100		435
	Wm. J. Springer	No. 20			15	
	Wm. J. Springer	No. 30				280
	Uhlmann Grain Co.	57 Spl.				295
	Total—		...	100	210	2,010

BARTLETT-FRAZIER CO.

(In thousands of bushels, i. e., "000" omitted)

1930 July Wheat

Account No. 20

Date	Bought	Sold	Long	Short
1930				
Feb. 4		495	495	
5			495	
6			495	
7			495	
8			495	
Sunday				
10			495	
11			495	
Holiday				

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Comp. 407

BARTLETT-FRAZIER CO.
(In thousands of bushels, i. e., "000" omitted)

1930 July Wheat

Date	Account No. 7 Bought	Sold	Long	Short	Account No. 20 Bought	Sold	Long	Short	Total Bought	Sold	Long	Short
1930												
Feb. 4						495		495				
5								495				
6								495				
7								495				
8								495				
10								495				
11								495				
13								495				
14					495	500		500				
15								500				
17								500				
18								500				
19								500				
20								500				
21								500				
24								500				
25								500				
26					500		Even					
Mar. 12						200		200				
13								200				
14								200				
15								200				
17								200				
18								200				
19								200				
20								200				
21								200				
22					300	300		200				
24						200		400				
25					200			200				
26								200				
27								200				
28								200				
29								200				
31								200				
Apr. 1								200				200
2	125		125		475		275		600		400	
3	400		525				275		400		800	
4			525				275				800	
5			525				275				800	
7			525				275				800	
8			525				275				800	
9	75		600		325		600		400		1200	
10			600				600				1200	
11			600				600				1200	
12	200		400		400		600			600	600	

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Comp. 407 (cont.)

BARTLETT-FRAZIER CO. (cont.)
(In thousands of bushels, i. e., "000" omitted)

1930 July Wheat

Date	Account No. 7 Bought	Sold	Long	Short	Account No. 20 Bought	Sold	Long	Short	Total Bought	Sold	Long	Short
1930												
Apr. 14			400				200				600	
15			400				200				600	
16			400			500		300		500	400	300
17			400					300			400	300
19			400		500		200		500		600	
21			400				200				600	
22			400				200				600	
23			400			500		300		500	400	300
30			400		300		100		300		500	
May 1			400				100				500	
2			400				100				500	
3			400				100				500	
5			400				100				500	
6			400			400		300		400	400	300
7			400		400		100		400		500	
8			400				100				500	
9			400				100				500	
10			400				100				500	

1930 September Wheat

1930												
Apr. 22		200		200								
23				200								
24				200								
25				200								
26				200								
28				200								
29				200								
30				200								
May 1				200								200
2				200								200
3				200								200
5				200								200
6				200								200
7		200		400						200		400
8				400		200		200		200		600
9				400				200				600
10				400				200				600
12				400				200				600
13				400				200				600
14				400				200				600
15				400				200				600
16				400				200				600
17				400				200				600
19				400				200				600
20				400				200				600

563

Comp. 407 (cont.) BARTLETT-FRAZIER CO. (cont.)

(In thousands of bushels, i. e., "000" omitted)

1930 September Wheat

Date	Account No. 7 Bought	Sold	Long	Short	Account No. 20 Bought	Sold	Long	Short	Total Bought	Sold	Long	Short
1930												
May 21				400				200				600
22				400				200				600
23				400				200				600
24				400				200				600
26				400				200				600
27				400				200				600
28				400				200				600
29				400				200				600
31				400				200				600
June 2				400				200				600
3				400				200				600
4				400				200				600
5				400				200				600
6				400				200				600
7				400				200				600
9				400				200				600
10				400				200				600
11				400				200				600
12				400				200				600
13				400		200		400		200		800
14		95		495		95		495		190		990
16				495				495				990
17				495				495				990
18				495				495				990
19				495				495				990
20				495				495				990
21				495				495				990
23				495				495				990
24				495				495				990
25				495				495				990
26	495		Even		495		Even		990			Even
1930					1930 December Wheat							
June 14		200		200								
16				200								
18				200								
20				200								
21				200								
23				200								
24				200								
26	200		Even									
Aug. 4	200		200						200		200	
5			200								200	
6	200		400		100		100		300		500	
7			400				100				500	

564

Comp. 407 (cont.) BARTLETT-FRAZIER CO. (cont.)

(In thousands of bushels, i. e., "000" omitted)

1930 December Wheat

Date	Account No. 7 Bought	Sold	Long	Short	Account No. 20 Bought	Sold	Long	Short	Total Bought	Sold	Long	Short
1930												
Aug. 8			400				100				500	
9			400				100				500	
11		400	Even			100	Even			500	Even	
13		200		200		200		200		400		400
14				200				200				400
15	400		200		200		Even		600		200	
16			200									200
18		200	Even							200	Even	
Sept. 26		200		200								
Oct. 23				200								
24				200								
25				200								
27				200								
28				200								
29				200								
30				200								
31				200								
Nov. 1				200								
3				200								
5				200								
6				200								
7	100			100								
12				100								
1930					1931 May Wheat							
Sept. 26		200		200								
27				200								
29	200		Even									
Nov. 14		400		400								
15				400								
17	200			200								
18				200								
1930					1931 July Wheat							
Nov. 18								200				
Dec. 6								200				
8								200				
11								200				
13								200				
15		200		200				200		200		400
16				200				200				400
17				200				200				400
20				200				200				400
22				200				200				400
26				200		100		300		100		500
27				200				300				500
29				200				300				500
30				200				300				500
31				200				300				500

565

Comp. 407 (cont.) BARTLETT-FRAZIER CO. (cont.)

(In thousands of bushels, i. e., "000" omitted)

1931 July Wheat

Date	Account No. 7 Bought	Sold	Long	Short	Account No. 20 Bought	Sold	Long	Short	Total Bought	Sold	Long	Short
1931												
Jan. 2	200		..	..	200			100	400			100
3								100				100
8	50		50						50		50	
12		70		20						70		20
14				20								20
15		300		320						300		320
17				420								420
23				420								420
31				420								420
Feb. 3				420								420
10	120			300					120			300
14				300								300
16				300		100		100		100		400
19				300				100				400
20				300				100				400
26				300				100				400
28				300				100				400
Mar. 3				300				100				400
7				300				100				400
11				300				100				400
20				300				100				400
24				300				100				400
25				300				100				400
30				300				100				400
Apr. 1				300				100				400
10				300				100				400
13				300				100				400
14				300				100				400
15	300		..	..	100		..	..	400		..	..
1931					1931 September Wheat							
Feb. 28				100				200				300
Mar. 10				100		100		300		100		400
13		50		150		50		350		100		500
14				150				350				500
16				150				350				500
17				150				350				500
18				150				350				500
19				150				350				500
20		100		250				350		100		600
21				250				350				600
23				250				350				600
24				250				350				600
25				250				350				600

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Comp. 407 (cont.)

BARTLETT-FRAZIER CO. (cont.)
(In thousands of bushels, i. e., "000" omitted)

1931 September Wheat

Date	Account No. 7 Bought	Sold	Long	Short	Account No. 20 Bought	Sold	Long	Short	Total Bought	Sold	Long	Short
1931												
Mar. 26				250				350				600
27				250				350				600
28				250				350				600
30				250				350				600
31				250				350				600
Apr. 1				250				350				600
2				250				350				600
4				250				350				600
6				250				350				600
7				250				350				600
8				250				350				600
9				250				350				600
10				250				350				600
11				250				350				600
13				250				350				600
14				250				350				600
15				250				350				600
16				250				350				600
17				250				350				600
18	250			Even	350			Even	600			Even
24		200		200						200		200
25		100		300								
27				300								
30	300			Even								
June 18		200		200								
20	200			Even								
30		300		300								
July 1				300								
2				300								
3				300								
6				300								
7				300								
8				300		100		100		100		400
9				300				100				400
10				300				100				400
11				300				100				400
13				300	100			Even	100			300
14	300			Even					300			Even

1931 December Wheat

1931												
Apr. 24		100		100								
25				100								
27				100								
30	100			..								

567

Comp. 407 (cont.) BARTLETT-FRAZIER CO. (cont.)

(In thousands of bushels, i. e., "000" omitted)

1931 December Wheat

Date	Account No. 7 Bought	Sold	Long	Short	Account No. 20 Bought	Sold	Long	Short	Total Bought	Sold	Long	Short
1931												
May 20		100		100								
21		200		300								
23				300								
26	300		..	..								
June 18		200		200								
20	200		..	..								
July 1		100		100								
2				100								
3				100		100		100		100		200
6				100				100				200
7				100				100				200
8				100				100				200
9				100				100				200
10				100				100				200
11				100				100				200
13				100				100				200
14				100				100				200
15				100				100				200
16	100		..	..	100		..	..	200		..	..
22		200		200								
23				200								
24		100		300								
25				300								
27				300		200		200		200		500
28				300		200		400		200		700
29				300				400				700
30				300				400				700
31				300				400				700
Aug. 1				300				400				700
8		200		200								
10	200		..	..								
1931					1932 May Wheat							
Aug. 31		100		100								
Sept. 3		100		200								
8		100		300								
23				300								
26	100			200								
28	200		Even									
Oct. 9	200		200									
10			200									
15			200									
16			200									
17			200									
19			200									
20			200									

568
Comp. 407 (cont.)

BARTLETT-FRAZIER CO. (cont.)
(In thousands of bushels, i. e., "000" omitted)

1932 May Wheat

Date	Account No. 7 Bought	Sold	Long	Short	Account No. 20 Bought	Sold	Long	Short	Total Bought	Sold	Long	Short
1931												
Oct. 21			200									
22			200									
23			200									
24	200		400									
26			400									
27			400									
28			400									
29			400									
30			400									
31			400									
Nov. 13			500									
14			500									
21				100								
23				100								
24		200		300								
25				300								
30				400								
Dec. 1	200			200								
2				200								
3				200								
4				200								
5				200								
7				200								
8				200								
9				200								
10				200		300		300		300		500
14				200	300		Even		300			200
16	200		Even									
22		200		200								
23		100		300								
24				300								
29				300								

569

Comp. 407 (cont.)

CLEMENT, CURTIS & CO.

(In thousands of bushels, i. e., "000" omitted)

1930 May Wheat

Account A W C

Date		Bought	Sold	Long	Short
1930					
Jan.	10		400		400
	11				400
	13				400
	14				400
	15	200			200
	16		200		400
	17				400
	18				400
	20				400
	21				400
	22				400
	23				400
	24	200			200
	25				200
	27	100			100
	28				100
	29		200		300
	30				300
	31				300
Feb.	1				300
	3	200	200		200
	4				300
	5		200		500
	6	300			200
	7	200			..

1930 July Wheat

1930					
Jan.	27		200		200
	28				200
	29		200		400
	30				400
	31				400
Feb.	1				400
	3				400
	4		200		600
	5				600
	6		350		950
	7				950
	8				950
	10				950
	11				950
	13				950
	14				950
	15				950
	17				950

570
Comp. 407 (cont.)

CLEMENT, CURTIS & CO. (cont.)
(In thousands of bushels, i. e., "000" omitted)

1930 July Wheat

Date	Account A W C Bought	Sold	Long	Short	Account 209-C Bought	Sold	Long	Short	Total Bought	Sold	Long	Short
1930												
Feb. 18				950								
19				950								
20				950								
21				950								
24				950								
25				950								
26	950		Even									
27		400		400								
28	400		Even									
Mar. 12		100		100								
13				100								
14				100								
15				100								
17				100								
18				100								
19				100								
20				100								
21				100								
22	100		Even									
Apr. 9	200		800									
12		400	400									
16			400									
19			400									
21			400									
23			200									
24			200									
May 22				200								
1930					1930 September Wheat							
Apr. 28	400		Even									
1930					1930 December Wheat							
June 14		200		400								
16				400								
18				400								
20				400								
21				400								
23				400								
24				400								
26				400								
27				400								
30				400		200		200		200		600
July 1				400				200				600
2				400				200				600
3				400				200				600
7				400				200				600

571

Comp. 407 (cont.) CLEMENT, CURTIS & CO. (cont.)

(In thousands of bushels, i. e., "000" omitted)

1930 December Wheat

Date	Account A W C				Account 209-C				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1930												
July 8				400				200				600
9	400		Even		40			160	440			160
10					160		Even					
11		200		200								
12				200								
14				200								
15				200								
16	200		Even									
17	400		400									
18		150	250									
19	400		650									
21		650	Even									
Aug. 4	200		Even		600		400		800		400	
5							400					
6	600	400	200				400		600	400	600	
7			200				400				600	
8	400		600				400		400		1000	
9		400	200				400			400	600	
11			200				400				600	
12		200	Even				400			200	400	
13							400					
14							400					
15	200		200				400		200		600	
16			200				400				600	
18			200				400				600	
19			200				400				600	
20			200				400				600	
21			200				400				600	
22			200				400				600	
23			200				400				600	
25			200		200		600		200		800	
26			200				600				800	
27			200				600				800	
28			200				600				800	
29			200				600				800	
Sept. 2			200			200	400			200	600	
3			200				400				600	
4			200			200	200			200	400	
11		400		400								
15				400								
16	400		Even									
Oct. 31		200		200								

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Comp. 407 (cont.) CLEMENT, CURTIS & CO. (cont.)

(In thousands of bushels, i. e., "000" omitted)

1930 December Wheat

Date	Account A W C Bought	Sold	Long	Short	Account 209-C Bought	Sold	Long	Short	Total Bought	Sold	Long	Short
1930												
Nov. 1				200								
3		250		450								
5	200			250								
6				250								
7				250								
12	450		200									
1930					1931 May Wheat							
Sept. 24		200		200								
25				200								
26				200								
27				200								
29				200								
30				200								
Nov. 14		200		200								
15				200								
17				200								
18				200								
1930					1931 July Wheat							
Nov. 18		100		300								
Dec. 6				300								
8				300								
11				300								
13		100		400								
15				400								
16		100		500								
17				500								
20		100		600								
22				600								
26				600								
29				600								
1931												
Jan. 2				600								
3				600								
5				600								
8				320								
12				320								
14	200			120								
15				120								
17		100		320								
23				320								
31				320								

573

Comp. 407 (cont.) CLEMENT, CURTIS & CO. (cont.)

(In thousands of bushels, i. e., "000" omitted)

1931 July Wheat

Date	Account A W C Bought	Sold	Long	Short	Account S Spl. Bought	Sold	Long	Short	Total Bought	Sold	Long	Short
1931												
Feb. 3				320								
10				200								
14				200								
16				200								
19				200								
20				200								
26				200								
28	10			190								
Mar. 3				190								
7				190								
11				190								
20		100		390								
24				390								
25		100		490								
30				490								
Apr. 1				490								
10				490								
13				490								
14	500		10									
15			10									
16	50		60									
17			60									
20			60									
21			60									
27			60									
1931					1931 September Wheat							
Feb. 28				270								
Mar. 10				270								
13				270								
19		100		370								
20				370								
23				370								
28				370								
30				370								
Apr. 1				370								
2				370								
4				370								
10				370								
14	100			270								
15				270								
16	100			170								
18				170								
20				170								
21				170								
24		100		270		100		100		200		370

CLEMENT, CURTIS & CO. (cont.)
(In thousands of bushels, i. e., "000" omitted)

1931 September Wheat

Date	Account A W C				Account C W A				Account S Spl.				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1931																
Apr. 25				270								100				370
27				270								100				370
30				270								100				370
May 1				270								100				370
4				270								100				370
16		100		370								100		100		470
18		100		470								100		100		570
19				470								100				570
20				470								100				570
21				470								100				570
22				470								100				570
23				470		200		200	100		Even		100	200		670
25				470				200								670
26				470				200								670
27				470				200								670
28				470				200								670
29				470				200								670
June 1				470				200								670
2				470				200								670
3				470				200								670
4				470				200								670
5	400			70				200					400			270
11	200		130		200			Even					400		130	
18		200		70												
20				70												
22				70												
23		200		270												
24	270			Even												
29	100		100													
30			100													

575

Comp. 407 (cont.) CLEMENT, CURTIS & CO. (cont.)

(In thousands of bushels, i. e., "000" omitted)

1931 September Wheat

Date	Account A W C Bought	Sold	Long	Short	Account C W A Bought	Sold	Long	Short	Total Bought	Sold	Long	Short
1931												
July 1		200		100								
2				100								
3				100								
6		100		200								
7		100		300								
8				300								
9				300								
10				300								
11	55			245								
13	100			145								
14		100		245								
15				245								
16	245		Even									
1931					1931 December Wheat							
Apr. 23		100		100			100		100			200
24		200		300			100		200			400
25				300			100					400
27		100		400			100		100			500
28				400			100					500
29				400			100					500
30				400			100					500
May 1				400			100					500
2				400			100					500
4				400			100					500
5				400			100					500
6				400			100					500
7				400			100					500
8				400			100					500
9				400			100					500
11				400			100					500
12				400			100					500
13				400			100					500
14				400			100					500
15				400			100					500

Comp. 407 (cont.)

CLEMENT, CURTIS & CO. (cont.)

1931 December Wheat

(In thousands of bushels, i. e., "000" omitted)

Date	Account A W C				Account C W A				Account S Spl.				Account No. 785				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1931																				
May 16		90		490				100		10		10								100
18				490				100				10								600
19				490				100				10								600
20				490				100				10								600
21				490				100				10								600
22				490				100				10								600
23				490		100		200				10								700
25				490				200				10								700
26				490				200	10		..	..						10		690
27				490				200												690
28				490				200												690
29				490				200												690
June 1				490				200												690
2				490				200												690
3				490				200												690
4				490				200												690
5				490				200												690
6				490				200												690
8				490		200		400												890
9				490				400												890
10				490				400						400		400				1290
11				490				400								400				1290
12				490				400								400				1290
13				490				400								400				1290
15				490				400								400				1290
16				490				400								400				1290
17				490				400					400		..	..	400			890
18				490				400						200		200			200	1090
19				490				400								200				1090
20	470			20				400								200	470			620
22		200		220				400								200			200	820
23				220				400								200				820
24	220		..	..	400		..	..					200		..	..	820		..	..

Complainant's Exhibit 407.

Comp. 407 (cont.)

CLEMENT, CURTIS & CO. (cont.)

(In thousands of bushels, i. e., "000" omitted)

1931 December Wheat

Date		Account A W C				Account C W A				Account S Spl.				Total			
		Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1931																	
July	1		400		400												
	3				400												
	6				400												
	7				400												
	8				400												
	9				400												
	10				400												
	11				400												
	13				400						200		200		200		600
	14				400						200		400		200		800
	15				400								400				800
	16	400		...	...								400	400			400
	17												400				
	18												400				
	20												400				
	21		400		400								400		400		800
	22				400		100		100				400		100		900
	23				400				100				400				900
	24	285			115				100				400	285			615
	25				115				100				400				615
	27				115				100				400				615
	28		200		315				100				400		200		815
	29				315				100				400				815
	30				315				100				400				815
	31		100		415				100				400		100		915
Aug.	1				415				100				400				915
	3				415				100				400				915
	4				415				100				400				915
	5				415		100		200				400		100		1015
	6				415				200				400				1015
	7				415	200		...	...	400		...	...	600			415
	8				415						200		200		200		615
	10	140			275								200	140			475

300

Complainant's Exhibit 407.

CLEMENT, CURTIS & CO. (cont.)
(In thousands of bushels, i. e., "000" omitted)

1931 December Wheat

Date		Account A W C Bought	Sold	Long	Short	Account C W A Bought	Sold	Long	Short	Account S Spl. Bought	Sold	Long	Short	Total Bought	Sold	Long	Short
1931																	
Aug.	11		200		475								200		200		675
	12				475								200				675
	13				475								200				675
	14				475								200				675
	15				475								200				675
	17	100			375								200	100			575
	18	520		145						200		...	...	720		145	
	19			145													
	20			145													
	24		145	...	...												
Sept.	11		300		300												
	12				300												
	14	300		...	...												
	23		400		400												
	24				400												
	25				400												
	26				400												
	29	500		100													
Oct.	3			100													
	6		400		300												
	7				300												
	8	500	300		100												

1932 May Wheat

1931																	
Aug.	25		200		200												
	31		200		400												
Sept.	3				400												
	8				400												
	23				400												
	26				400												
	28				400												
	30				400	200		200							200		600
Oct.	1				400			200									600
	2				400			200									600

Complainant's Exhibit 407.

Comp. 407 (cont.)

CLEMENT, CURTIS & CO. (cont.)

(In thousands of bushels, i. e., "000" omitted)

1932 May Wheat

Date		Account A W C				Account C W A				Account No. 209-C				Total			
		Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1931																	
Oct.	3				400				200								600
	5				400				200								600
	6				400				200								600
	7				400				200								600
	8	400			Even	200			Even					600			Even
	15	100		400													
	16	5		405													
	17			405													
	19			405													
	20			405													
	21			405													
	22			405													
	23			405													
	24			405		200		200						200		605	
	26			405				200								605	
	27			405				200								605	
	28			405		200		400						200		805	
	29			405				400								805	
	30			405				400								805	
	31			405				400								805	
Nov.	2			405				400								805	
	3			405				400								805	
	4			405				400								805	
	5			405				400		200		200		200		1005	
	6			405				400				200				1005	
	7			405				400				200				1005	
	9			405				400				200				1005	
	10			405				400				200				1005	
	12			405				400				200				1005	
	13			405				400				200				1005	
	14		400	5			400		Even		200		Even		1000	5	
	21								200				210				410
	23								200				210				410
	24						200		400		95		305		295		705
	25						95		495		105		410		200		905
	27								495				410				905
	28								495				410				905
	30					295			290				410	905			700

Comp. 407 (cont.)

CLEMENT, CURTIS & CO. (cont.)

(In thousands of bushels, i. e., "000" omitted)

1932 May Wheat

Date		Account A W C				Account C W A				Account No. 209-C				Total			
		Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1931																	
Dec.	1					290		Even		10		400		300			400
	2											400					
	3											400					
	4											400					
	5											400					
	7											400					
	8											400					
	9											400					
	10											400					
	14											400					
	16										200	200					
	21		300		300							200			300		500
	22				300							200					500
	23				300							200					500
	24				300							200					500
	28				300							200					500
	29				300							200					500
	30				300							200					500
	31				300							200					500

Complainant's Exhibit 407.

580

Comp. 407 (cont.)

JACKSON BROS., BOESEL & CO.

(In thousands of bushels, i. e., "000" omitted)

1930 July Wheat

Date	Account 209-C Bought	Sold	Long	Short	Account 210-C Bought	Sold	Long	Short	Total Bought	Sold	Long	Short
1930												
Apr. 19	200	120	80									
21		80	Even									
May 3	250	250	Even									
7	250		Even									
12		110	110									
22		250	410									
				1930 September Wheat								
Apr. 28		400	400									
29	290		110									
30	110		Even									
May 7	250	200	200									
8			200									
9		200	400									
10			400									
15			400			220		220		220		620
16			400					220				620
17			400					220				620
19			400					220				620
20			400		50			170	50			570
21			400					170				570
22			400			250		420		250		820
23			400					420				820
24			400					420				820
26			400					420				820
27			400					420				820
28			400					420				820
29			400					420				820
31			400					420				820
June 2			400					420				820
3			400					420				820
4			400					420				820
5			400					420				820
6			400					420				820
7			400					420				820
9			400					420				820
10			400					420				820
11			400		250			170	250			570
12			400									
13	200		200									
14	200		Even									
16		200	200									
17			200									
18	100		100									
20	100		Even									

581
Comp. 407 (cont.)

JACKSON BROS., BOESEL & CO. (cont.)
(In thousands of bushels, i. e., "000" omitted)

1930 December Wheat

Date	Account 209-C Bought	Sold	Long	Short	Account L F C Bought	Sold	Long	Short	Total Bought	Sold	Long	Short
1930												
June 16		200		200								
18	50			150								
20	100			50								
21		200		250		200		200		400		450
23				250				200				450
24				250				200				450
26				250				200				450
27				250				200				450
30		200		450				200		200		650
July 1				450				200				650
2				450				200				650
3	120			330				200	120			530
7				330				200				530
8				330				200				530
9				330				200				530
10				330				200				530
11				330				200				530
12				330				200				530
14				330				200				530
15				330				200				530
16				330	200		Even		200			330
17	930		600									
18		150	450									
19			450									
21			450									
25			450									
28		450	Even									
Aug. 4	400		400									
5			400									
6	50		450		450		450		500		900	
7			450				450				900	
8			450				450				900	
9			450				450				900	
11		50	400			450	Even			500	400	
15	400		400									
18			400									
20			400									
23	50		450		250		250		300		700	
25			450				250				700	
26			450		200		450		200		900	
27			450				450				900	
28			450				450				900	

582

Comp. 407 (cont.) JACKSON BROS., BOESEL & CO. (cont.)

(In thousands of bushels, i. e., "000" omitted)

1930 December Wheat

Date	Account 209-C Bought	Sold	Long	Short	Account L F C Bought	Sold	Long	Short	Total Bought	Sold	Long	Short
1930												
Sept. 2			450				450				900	
3			450				450				900	
4			450				450				900	
5			450				450				900	
6			450				450				900	
8			450				450				900	
9			450				450				900	
10			450				450				900	
11			450				450				900	
12			450				450				900	
13			450				450				900	
15			450				450				900	
16			450				450				900	
17			450				450				900	
18			450				450				900	
19			450				450				900	
20			450				450				900	
22			450				450				900	
23			450				450				900	
24		450	Even			450	Even			900	Even	

1930 1931 July Wheat

	Account 40				Account 209-C				Total			
Dec. 26		335		335								
27				335								
29	120	260		475	40		40		120	300		515
30				475			40					515
31				475			40					515
1931												
Jan. 2				475			40					515
3				475			40					515
5	300			175			40		300			215
8				235			40					275
12		165		400			40			165		440
14				400			40					440
15				400			40					440
17				400			40					440
19				400	125		165			125		565
20				400			165					565
21				400			165					565
22				400			165					565
23				400			165					565
24				400			165					565
26				400	300		465			300		865
27				400			465					865
28				400			465					865
29				400			465					865
30				400			465					865
31				400			465					865

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Comp. 407 (cont.)

JACKSON BROS., BOESEL & CO. (cont.)
(In thousands of bushels, i. e., "000" omitted)

1931 July Wheat

Date	Account 40 Bought	Sold	Long	Short	Account 209-C Bought	Sold	Long	Short	Total Bought	Sold	Long	Short
1931												
Feb. 2				400				465				865
3				400				465				865
4				400				465				865
5				400				465				865
6				400				465				865
7				400				465				865
9				400				465				865
10				400				465				865
11				400				465				865
13				400				465				865
14		55		455				465		55		920
16	200			255				465	200			720
17				255				465				720
18				255				465				720
19		200		455				465		200		920
20				455				465				920
21				455				465				920
24				455				465				920
25				455				465				920
26				455				465				920
27				455				465				920
28	200			255				465	200			720
Mar. 2				255				465				720
3		165		420				465		165		885
4				420				465				885
5				420				465				885
6				420				465				885
7				420				465				885
9				420				465				885
10				420				465				885
11				420				465				885
12				420				465				885
13				420				465				885
14				420				465				885
16				420				465				885
17				420				465				885
18				420				465				885
19				420				465				885
20				420				465				885
21				420				465				885
23				420				420				885
24				420				465				885
25				420				465				885
26				420				465				885
27				420				465				885
28				420				465				885
30				420				465				885
31				420				465				885

584

Comp. 407 (cont.) JACKSON BROS., BOESEL & CO. (cont.)
(In thousands of bushels, i. e., "000" omitted)

1931 July Wheat

Date	Account 40 Bought	Sold	Long	Short	Account 209-C Bought	Sold	Long	Short	Total Bought	Sold	Long	Short
1931												
Apr. 1				420				465				885
2				420				465				885
4				420				465				885
6				420				465				885
7				420				465				885
8				420				465				885
9				420				465				885
10				420				465				885
11				420				465				885
13				420				465				885
14				420				465				885
15	200			220				465	200			685
16				220				465				685
17	220		...	...				465	220			465
20					265			200				
21								200				
27					200			...				

1931				1931 September Wheat							
Mar. 19				100							
20		100		200							
23				200							
28		100		300							
30				300							
Apr. 1				300							
2		150		450							
4				450							
10				450		250		250		250	700
14				450				250			700
15				450				250			700
16				450				250			700
18				450				250			700
20				450				250			700
21				450				250			700
24				450		200		450		200	900
25				450				450			900
27				450				450			900
30	150			300	450		Even		600		300
May 1	300		Even								
June 18		200		200							
20				200							
22				200							
23				200							
24				200							
27				200							
29				200							
30				200							

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Comp. 407 (cont.)

JACKSON BROS., BOESEL & CO. (cont.)
(In thousands of bushels, i. e., "000" omitted)

1931 September Wheat

Date	Account 40 Bought	Sold	Long	Short	Account 209-C Bought	Sold	Long	Short	Total Bought	Sold	Long	Short
1931												
July 1		200		400								
2				400								
3	90	165		475		35		35	90	200		510
6				475				35				510
7				475				35				510
8				475				35				510
9				475				35				510
10	200	200		475				35	200	200		510
11	30			445	35		Even		65			445
13	200			245								
14				245								
15				245								
16	245		Even									
22				200								
24				200								
Aug. 1				200								
1931					1931 December Wheat							
Apr. 23		300		300								
24				300		200		200		200		500
25				300		100		300		100		600
27				300				300				600
28				300				300				600
29				300				300				600
30	300		...	...				300	300			300
May 1					200			100				
16								100				
20								100				
21								100				
23								100				
26					100		...	...				
July 1			200									
3			200									
6			200									
7	75		275									
8			275									
9		200	75									
10		100		25								
11		200		225								
13				225								
14				225								
15				225								
16	225		...	...								
22		200		200								
23				200								

Imp. 407 (cont.)

JACKSON BROS., BOESEL & CO. (cont.)
(In thousands of bushels, i. e., "000" omitted)
1931 December Wheat

Date	Account 40				Account 209-C				Account 209-C Spl.				Account 210-C				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1931																				
y 24				200																
25				200																
27				200																
28				200																
29				200																
30				200																
31				200																
g. 1				200																
3				200																
4				200																
5		295		495																
6				495																
7				495		200		200											200	695
8				495				200												695
10				495				200	65		65		360		360				425	1120
11				495				200	180		245		40		400				220	1340
12				495				200			245				400					1340
13	105			390				200			245				400	105				1235
14				390				200			245				400					1235
15				390				200			245				400					1235
17	100			290				200			245				400	100				1135
18				290				200			245				400					1135
19				290				200			245				400					1135
20		200		490		100		300			245				400				300	1435
21	400			90	100			200			245				400	500				935
22				90				200			245				400					935
24		300		390				200			245				400				300	1235
25				390				200			245				400					1235
26				390				200			245				400					1235
27				390				200			245				400					1235
28				390				200			245				400					1235
29				390				200			245				400					1235
31				390				200			245				400					1235

JACKSON BROS., BOESEL & CO. (cont.)
(In thousands of bushels, i. e., "000" omitted)

1931 December Wheat

Date	Account 40 Bought	Sold	Long	Short	Account 209-C Bought	Sold	Long	Short	Account 209-C Spl. Bought	Sold	Long	Short	Account 210-C Bought	Sold	Long	Short	Total Bought	Sold	Long	Short
1931																				
ept. 1				390				200				245				400				1235
2				390				200				245				400				1235
3				390				200				245				400				1235
4				390				200				245				400				1235
8				390				200				245				400				1235
9				390				200				245				400				1235
10				390				200				245				400				1235
11				390				200				245				400				1235
12				390				200				245				400				1235
14				390				200				245				400				1235
15	390		..	..				200				245				400	390			845
16								200				245				400				845
17								200				245				400				845
18								200				245				400				845
19								200				245				400				845
21								200				245				400				845
22								200				245				400				845
23								200				245				400				845
24	10		10					200				245				400	10		10	845
25			10					200				245	115			285	115		10	730
26			10					200				245	285		..	..	285		10	445
29			10					200				245							10	445
ct. 3			10					200				245							10	445
6			10					200				245							10	445
7			10					200				245							10	445
8			10					200				245							10	445
10		10	..	..				200				245						10		445
1931																				
								1932 May Wheat												
ug. 25												70								
31												70								

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Comp. 407 (cont.) JACKSON BROS., BOESEL & CO. (cont.)

(In thousands of bushels, i. e., "000" omitted)

1932 May Wheat

Date	Account 40 Bought	Sold	Long	Short	Account 209-C Spl. Bought	Sold	Long	Short	Total Bought	Sold	Long	Short
1931												
Sept. 3								70				
8								70				
23	75		75					70	75		75	70
26			75					70			75	70
28			75					70			75	70
30			75					70			75	70
Oct. 3			75					70			75	70
6			75					70			75	70
8			75					70			75	70
9			75					70			75	70
15								70				
16								70				
17								70				
19								70				
20								70				
21								70				
22								70				
23								70				
24								70				
26								70				
27								70				
28								70				
29								70				
30								70				
31								70				
Nov. 13								70				
14								70				
21								70				
23								70				
24								70				
25								70				
30						70		Even				

589
Comp. 407 (cont.)

F. B. KEECH & CO.
(In thousands of bushels, i. e., "000" omitted)

1930 May Wheat

Account A W C

Date	Bought	Sold	Long	Short
1930				
Jan. 16		400		400
17		100		500
18				500
20				500
21				500
22				500
23				500
24	150			350
25				350
27	40			310
28				310
29				310
30				310
31				310
Feb. 1				310
3				310
4				310
5				310
6				310
7	310		..	..

1930 July Wheat

1930				
Feb. 1		155		155
3	155		Even	
4		300		300
5				300
6		10		310
7				310
8				310
10				310
11				310
13				310
14				310
15				310
17				310
18				310
19				310
20				310
21				310
24				310
25				
26	310		Even	
Apr. 16		400		400
19				400
21				400
23				400
24				400

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Comp. 407 (cont.) F. B. KEECH & CO. (cont.)

(In thousands of bushels, i. e., "000" omitted)

1930 September Wheat

Account A W C

Date	Bought	Sold	Long	Short
1930				
May 7		200		200
8				200
9		200		400
10				400
15				400
20				400
22				400
26				400
June 2				400
7				400
10				400
11				400
12				400
13		200		600
14				600
16				600
17				600
18	200			400
20				400
21				400
23		10		410
26				410
27				410
July 1				410
2	210			200
7				200

1930 1390 December Wheat

June 18		200		200
19				200
20				200
21				200
23		200		400
24				400
25				400
26				400
27				400
28				400
30				400
July 1				400
2				400
3				400
7				400
8				400
9	200			200
10				200

591
Comp. 407 (cont.)

F. B. KEECH & CO. (cont.)
(In thousands of bushels, i. e., "000" omitted)

1930 December Wheat

Date	Account A W C				Account L				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1930												
July 11				200								
12				200								
14				200								
15	200		Even									
17	200		200									
18			200									
19	300		500									
21		300	200									
22			200									
23			200									
24			200									
25			200									
26			200									
28		200	Even									
Aug. 4	200		Even									
5	200		200									
6	800		1000									
7			1000									
8			1000									
9		1000	Even									
15	200		Even									
20	200		200									
23			200									
25			200									
26			200									
27			200									
28			200									
Sept. 2		250		50								
4		200		250								
11				250								
15		400		650								
16	650		Even									
19					300		300					
20						300	Even					
26				200								
Oct. 25						200		200				
27		200		200				200		200		400
28				200		195		395		195		595
29				200	200	200		395	200	200		595
30				200				395				595
31				200				395				595
Nov. 1				200				395				595
3				200	200	100		295	200	100		495
5				200		200		495		200		695
6												

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Comp. 407 (cont.) F. B. KEECH & CO. (cont.)

(In thousands of bushels, i. e., "000" omitted)

1930 December Wheat

Date	Account A W C Bought	Sold	Long	Short	Account L Bought	Sold	Long	Short	Total Bought	Sold	Long	Short
1930												
Nov. 7				200				495				695
8				200				495				695
10				200				495				695
12				200				495				695
13	200		Even		495		Even		695		Even	
1930					1931 May Wheat							
Sept. 24		600		400								
25				400								
26				400								
27				400								
29				400								
30	200			200								
Nov. 14		400		400				100		400		500
15				400				100				500
17	200			200				100	200			300
18				200				100				300
1930					1931 July Wheat							
Dec. 8		100		100								
11				100								
13				100								
15				100								
16				100								
17				100								
20	100			100								
22				100		100		100		100		200
26				100				100				200
29		100		200	100		..	..	100	100		200
1931												
Jan. 2				200	100	100	..	..	100	100		200
3				200								
8				200				200				400
12				200				200				400
14				200				200				400
15				200				200				400
17				200				200				400
23		100		400	100			205	100	100		605
31				500				205				705
Feb. 3				500				205				705
10				150								
14				150		155		155		155		305
16		100		250	155		..	..	155	100		250
19				250		200		200		200		450
20				250				200				450

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Comp. 407 (cont.)

F. B. KEECH & CO. (cont.)
(In thousands of bushels, i. e., "000" omitted)

1931 July Wheat

Date	Account A W C Bought	Sold	Long	Short	Account L Bought	Sold	Long	Short	Total Bought	Sold	Long	Short
1931												
Feb. 26		100		350	200		..	..	200	100		350
28	100	100		350								
Mar. 3				350								
7				350								
11				350								
20				350								
24		100		450								
25				450								
30				450								
Apr. 1				450								
10				450		200		200		200		650
13				450				200				650
14				450				200				650
15				450				200				650
16	450		..	..	100			100	550			100
17								100				
20								100				
21								100				
27								100				

1931 September Wheat

1931												
Feb. 28		100		200								
Mar. 10				200								
13				200		100		100		100		300
19				200				100				300
20				200				100				300
23		45		245		55		155		100		400
28				245				155				400
30				245				155				400
Apr. 1				245				155				400
2		100		345				155		100		500
4				345				155				500
10		200		545				155		200		700
14				545				155				700
15				545				155				700
16	300			245	55			100	355			345
18				245				100				345
20				245				100				345
21				245				100				345
24		100		345				100		100		445
25		200		545				100		200		645
27				545				100				645
30				545				100				645

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Comp. 407 (cont.) F. B. KEECH & CO. (cont.)

(In thousands of bushels, i. e., "000" omitted)

1931 September Wheat

Date	Account A W C				Account L				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1931												
May 1				545				100				645
4	300			245	100			Even	400			245
16				245								
18				245								
23				245								
26	200			45								
June 3				45								
4				45								
5				45								
11				45								
18		100		100								
20				100								
22				100								
23				100								
24	100			Even								
July 22				200								
24				200								
Aug. 1				200								

1931 December Wheat

1931												
Apr. 24		100		100								
25		100		200								
27				200								
30				200								
May 1				200								
16				200								
20				200								
21				200								
23				200								
26				200								
June 3				200								
4				200								
8				200								
10				200								
12	200			..								
18		100		100								
20				100								
22		200		300								
23		100		400								
26	100		100									
27			100									
July 1		100		..								
8		200		200								
9				200								
10				200								
11				200								

595
Comp. 407 (cont.)

F. B. KEECH & CO. (cont.)
(In thousands of bushels, i. e., "000" omitted)

1931 Deecmber Wheat

Account A W C

Date		Bought	Sold	Long	Short
1931					
July	13				200
	14				200
	15				200
	16	200		..	..
	21		100	..	..
	22		100		100
	23				100
	24				100
	25				100
	27				100
	28		100		200
	29				200
	30				200
	31				200
Aug.	1				200
	4				200
	5		205		405
	6				405
	7				405
	8				405
	10	125			280
	11	200			80
	12				80
	13				80
	14				80
	15	300		220	
	17			220	
	18			220	
	20			220	
	24		600	20	
	25		400		380
	29				380
	31				380
Sept.	9				380
	10				380
	11				380
	12				380
	14				380
	15				380
	18				380
	23				380
	24				380
	25				380
	26				380
	29				380

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Comp. 407 (cont.) F. B. KEECH & CO. (cont.)

(In thousands of bushels, i. e., "000" omitted)

1931 Deecmber Wheat

Date	Account A W C				Account L				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1931												
Oct. 3				380								
6				380								
7				380								
8	380		..	..								
1931					1932 May Wheat							
Oct. 3		200		200								
6				200								
8				200								
9				200								
21	100		100									
22			100									
23			100									
24	100		200									
26			200									
27			200									
28			200									
29			200									
30			200									
31	200		400									
Nov. 4	100	100	495		200		200		300	100	695	
5			495		200		400		200		895	
6			495				400				895	
7			495				400				895	
9			495				400				895	
10			495				400				895	
12			495				400				895	
13		495	Even			205	195			700	195	
14							195					
21		100		100			195			100	195	100
23				100			195				195	100
24		200		300			195			200	195	300
25				300			195				195	300
30				400			195				195	400
Dec. 1	200			200			195		200		195	200
2				200			195				195	200
3				200			195				195	200
4				200			195				195	200
5				200			195				195	200
7				200			195				195	200
8				200			195				195	200
9				200			195				195	200
10				200			195				195	200
14				200			195				195	200

597
Comp. 407 (cont.)

F. B. KEECH & CO. (cont.)
(In thousands of bushels, i. e., "000" omitted)

1932 May Wheat

Date	Account A W C				Account L				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1931												
Dec. 15				200				195			195	200
16				200				195			195	200
21				200				195			195	200
22				200				195			195	200
23				200				195			195	200
24				200				195			195	200
29				200				195			195	200

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Comp. 407 (cont.)

JAMES KIDSTON & CO.

(In thousands of bushels, i. e., "000" omitted)

1930 May Wheat

Account No. 8

Date		Bought	Sold	Long	Short
1930					
Feb.	3	100		100	
	4			100	
	5			100	
	6			100	
	7			100	

1930 July Wheat

1930					
Feb.	3		200		200
	4		200		400
	5				400
	6		200		600
	7				600
	8				600
	10				600
	11				600
	13				600
	14	300			300
	15				300
	17				300
	18				300
	19		100		400
	20				400
	21				400
	24	300			100
	25				100
	26	100		Even	
Mar.	11		300		300
	12		100		400
	22	200			200
	24		200		400
	25	200			200
	28				200
Apr.	2				200
	3				200
	4	400		200	
	9			200	
	12			200	
	16		600		400
	19	390			10
	21				10
	23				10
May	7	400		200	
	8			200	
	12			200	
	22		200		200

599
Comp. 407 (cont.)

JAMES KIDSTON & CO. (cont.)
(In thousands of bushels, i. e., "000" omitted)

1930 September Wheat

Account No. 8

Date		Bought	Sold	Long	Short
1930					
Apr.	28	200		Even	
May	7		200		200
	8				200
	9				200
	10		75		275
	15				275
	20				275
	22				275
	26		200		475
June	2	200			275
	7				275
	10				275
	11				275
	12				275
	13				275
	14				275
	16				275
	17				275
	18				275
	20				275
	21				275
	23				275
	26				275
	27				275
July	1	200	200		275
	2				275
	7				275

1930 December Wheat

1930					
July	7		200		200
	8				200
	9	200		Even	
	11		200		200
	12				200
	14				200
	15				200
	16	200		Even	
Aug.	7	100		100	
	8	200		300	
	9			300	
	11		300	Even	
	15	200		Even	
	27	175		175	
	28		175	Even	

600

Comp. 407 (cont.)

JAMES KIDSTON & CO. (cont.)

(In thousands of bushels, i. e., "000" omitted)

1930 December Wheat

Account No. 8

Date		Bought	Sold	Long	Short
1930					
Sept.	4		200		200
	11				400
	15				400
	16		200		600
	18	400			200
	19				200
	20				200
	26				200
Oct.	23		300		370
	24				370
	25	190	300		480
	27				480
	28		200		680
	29	400	200		480
	30				480
	31	200	200		480
Nov.	1				480
	3	200	200		480
	5	300	200		380
	6				380
	7				380
	12	380		Even	

1931 May Wheat

1930					
Oct.	25		200		200
	27				200
	28				200
	29				200
	30				200
	31				200
Nov.	14	200	400		500
	15				500
	17	300			200
	18	200		Even	
Dec.	10		195		395

1931 July Wheat

1930					
Dec.	17		100		100
	20				200
	22				200
	26				200
	29	40	100		260

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Comp. 407 (cont.)

JAMES KIDSTON & CO. (cont.)
(In thousands of bushels, i. e., "000" omitted)

1931 July Wheat

Account No. 8

Date		Bought	Sold	Long	Short
1931					
Jan.	2	130			130
	3				130
	8				130
	12				130
	14				130
	15		100		230
	17	75	100		355
	23				375
	31	100			275
Feb.	3				475
	10	155		...	...
	14		240		240
	16	100	100		240
	19				240
	20	140			100
	26	100	100		100
	28	100	100		100
Mar.	3				100
	7		100		200
	11				200
	20				300
	24				300
	25				300
	30		100		400
Apr.	1	100			300
	10				300
	13	300		...	...
	14	50		50	
	15	50		100	
	16			100	
	17			100	
	20			100	
	21		100	...	...

1931 September Wheat

1931					
Feb.	28		100		100
Mar.	10				100
	13				100
	19				100
	20				100
	23				100
	28				100
	30		100		200
Apr.	1		200		400
	2				400
	4				400
	10				400

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Comp. 407 (cont.)

JAMES KIDSTON & CO. (cont.)

(In thousands of bushels, i. e., "000" omitted)

1931 September Wheat

Account No. 8

Date		Bought	Sold	Long	Short
1931					
Apr.	11				400
	14				400
	15	200			200
	16				200
	18				200
	20	200		Even	
	21		100		100
	24				100
	25				100
	27				100
	30				100
May	1				100
	4				100
	16				100
	18				100
	23				100
	26				100
June	3		100		200
	4		100		300
	5	100			200
	11				200
	18				200
	20				200
	22				200
	23				200
	24	100			100
	27		100		200
	29				200
	30				200
July	1				200
	2				200
	3	90	200		310
	6				310
	7				310
	8				310
	9				310
	10	100			210
	11				210
	13				210
	14				210
	15		55		265
	16	265		Even	
	22		50		200
	24				200

603
Comp. 407 (cont.)

JAMES KIDSTON & CO. (cont.)
(In thousands of bushels, i. e., "000" omitted)

1931 September Wheat

Account No. 8

Date	Bought	Sold	Long	Short
1931				
Aug. 1				200
				1931 December Wheat
1931				
Apr. 25		100		100
27				100
30				100
May 1				100
16				100
20				100
21				100
23				100
26				100
June 3	100		...	...
4	100		100	
8			200	
10			200	
12			200	
18			200	
20			200	
22			200	
23			200	
26			200	
27			200	
July 1			200	
3			200	
6			200	
7			200	
8			200	
9		100	100	
10			100	
11			100	
13			100	
14			100	
15			100	
16	100		200	
21			200	
22			200	
23			200	
24			200	
25			200	
27			200	
28		200	...	...

604

Comp. 407 (cont.) JAMES KIDSTON & CO. (cont.)

(In thousands of bushels, i. e., "000" omitted)

1931 December Wheat

Account No. 8

Date		Bought	Sold	Long	Short
1931					
Aug.	4			25	
	5	200	300		75
	6				75
	7	200	200		75
	8				75
	10	275		200	
	11			200	
	12			200	
	13			200	
	14		200	...	...
	15	200		200	
	17			200	
	18			200	
	20			200	
	24			200	
	25			200	
	29		200	...	...
Sept.	12	100		100	
	14			100	
	15			100	
	18		100	...	...
	23		200		200
	24				200
	25	200		...	...
Oct.	6		200		200
	7				200
	8	200		...	...
	10		100		100

1932 May Wheat

1931					
Oct.	15			400	
	16			400	
	17	200	190	410	
	19	200	200	410	
	20			410	
	21			410	
	22			410	
	23			410	
	24	200	200	410	
	26			410	
	27			410	
	28			410	
	29	75		485	
	30			485	
	31			485	

605
Comp. 407 (cont.)

JAMES KIDSTON & CO. (cont.)
(In thousands of bushels, i. e., "000" omitted)
1932 May Wheat
Account No. 8

Date		Bought	Sold	Long	Short
1931					
Nov.	2			485	
	3			485	
	4		100	385	
	5		100	285	
	6			285	
	7			285	
	9			285	
	10			285	
	12			285	
	13			285	
	14		285	Even	
	21		200		200
	23				200
	24				200
	25				200
	30	200			90
Dec.	1				90
	2				90
	3				90
	4				90
	5		45		135
	7				135
	8	100			35
	9		300		335
	10				335
	14				335
	16				335
	21				335
	22				335
	23				335
	24				335
	29		100		435

606

Comp. 407 (cont.)

WM. J. SPRINGER

(In thousands of bushels, i. e., "000" omitted)

1931 July Wheat

Account No. 20

Date		Bought	Sold	Long	Short
1931					
Apr.	1	200	100	...	...
1931					1931 September Wheat
Apr.	4		100		100
	10				100
	14				100
	15				100
	16				100
	18				100
	20				100
	21				100
	24				100
	25				100
	27				100
	30				100
May	1				100
	4				100
	16				100
	18				100
	23				100
	26				100
June	3		100		200
	4				200
	5				200
	11				200
	18				200
	20				200
	22				200
	23		200		400
	24	200			200
	27				200
	29				200
	30				200
July	1				200
	2				200
	3				200
	6				200
	7				200
	8				200
	9	100			100
	10	100		Even	
	11	100	100	Even	
	16	100		100	
	22		300		230
	24	200	200		230

607
Comp. 407 (cont.)

WM. J. SPRINGER (cont.)
(In thousands of bushels, i. e., "000" omitted)

1931 September Wheat

Account No. 20

Date		Bought	Sold	Long	Short
1931					
Aug.	1	230		Even	
					1931 December Wheat
1931					
June	4	100		100	
	8			200	
	10			200	
	12			200	
	18			200	
	20			200	
	22			200	
	23			200	
	26			200	
	27			200	
July	1			200	
	3			200	
	6		200		
	10		100		100
	11				100
	13		200		300
	14				300
	15				300
	16	300		...	...
	28		200		200
	29				200
	30				200
	31				200
Aug.	1	200		...	...
	4		200		115
	5		200		315
	6	200			115
	7	20			95
	8				95
	10	95		...	...
	12		155		155
	13	355		200	
	14		200	...	...
	15		50		50
	17	300		250	
	18			250	
	20			250	
	24			250	
	25			250	
	29		200	50	
	31		400		350

608

Comp. 407 (cont.) WM. J. SPRINGER (cont.)

(In thousands of bushels, i. e., "000" omitted)

1931 December Wheat

Date	Account No. 20 Bought	Sold	Long	Short	Account No. 30 Bought	Sold	Long	Short	Total Bought	Sold	Long	Short
1931												
Sept. 10				350				185				535
11	300			50				185	300			235
12				50				185				235
14				50				185				235
15	60		10		185		..	..	245		10	
18			10									
23			10									
24			10									
25			10									
26			10									
29			10									
Oct. 3		110		100								
6	100		..	..								
7	120	200		80								
8	80		..	..								
1931					1932 May Wheat							
Oct. 3		200		200								
6	200		Even									
15			200									
16			200									
17	60		260									
19			260									
20			260									
21			260									
22	90		350									
23			350									
24			350		400	200	200		400	200	550	
26			350				200				550	
27			350			300		100		300	350	100
28			350		100		Even		100		350	
29			350									
30	100		450		400	400	Even		500	400	450	
31			450		300		300		300		750	
Nov. 2			450				300				750	
3			450				300				750	
4			450		500	500	300		500	500	750	
5	25		475		175		475		200		950	
6			475				475				950	
7			475				475				950	
9			475				475				950	
10			475				475				950	
12			475				475				950	
13		460	15			340	135			800	150	
14			15				135				150	

609
Comp. 407 (cont.)

WM. J. SPRINGER (cont.)
(In thousands of bushels, i. e., "000" omitted)

1932 May Wheat

Date	Account No. 20 Bought	Sold	Long	Short	Account No. 30 Bought	Sold	Long	Short	Total Bought	Sold	Long	Short
1931												
Nov. 21		200		185			135			200	135	185
23	80	280		385			135		80	280	135	385
24				385			135				135	385
25				385		300		165		300		550
27				385	300	300		165	300	300		550
28				385				165				550
30	50			335	150			15	200			350
Dec. 1	350		15					15	350		15	15
2			15					15			15	15
3			15					15			15	15
4			15					15			15	15
5			15		20	20		15	20	20	15	15
7			15			200		215		200	15	215
8			15		300	100		15	300	100	15	15
9			15			300		315		300	15	315
10			15					315			15	315
11			15					315			15	315
12			15					315			15	315
14			15		100			215	100		15	215
15			15					215			15	215
16			15					215			15	215
17			15					215			15	215
18			15					215			15	215
21			15					215			15	215
22			15					215			15	215
23			15					215			15	215
24			15			65		280		65	15	280
29			15					280			15	280

610

Comp. 407 (cont.)

UHLMANN GRAIN CO.

(In thousands of bushels, i. e., "000" omitted)

1930 September Wheat

Account 57 Spl.

Date	Bought	Sold	Long	Short
1930				
June 21		100		100
23				100
26				100
27				100
July 1				100
2				100
7		200		300
1930			1930 December Wheat	
June 21		100		100
23				100
24				100
26				100
27				100
30				100
July 1				100
2				100
3				100
7				100
8				100
9				100
10				100
11				100
12				100
14				100
15				100
16				100
17				100
18				100
19				100
21				100
25	100		Even	
1930			1931 May Wheat	
Nov. 14		200		200
15				200
17				200
18				200
Dec. 10				200

611
Comp. 407 (cont.)

UHLMANN GRAIN CO. (cont.)
(In thousands of bushels, i. e., "000" omitted)
1931 July Wheat

Date	Account 57 Spl. Bought	Sold	Long	Short
1930				
Dec. 6		200		200
8		100		300
11		190		490
13				490
15				490
16				490
17				490
20				490
22		5		495
23				495
24				495
26				495
27				495
29				495
30				495
31				495
1931				
Jan. 2				495
3				495
5				495
6				495
7				495
8				495
9				495
10				495
12				495
13				495
14	495		..	..
16		495		495
17				495
19				495
20				495
21				495
22				495
23				495
24				495
26				495
27				495
28				495
29				495
30				495
31				495

612

Comp. 407 (cont.) UHLMANN GRAIN CO. (cont.)

(In thousands of bushels, i. e., "000" omitted)

1931 July Wheat

Account 57 Spl.

Date	Bought	Sold	Long	Short
1931				
Feb. 2				425
3	325			100
4				100
5				100
6				100
7		100		200
9				200
10	200		..	..
16		100		100
19				100
20				100
26				100
28				100
Mar. 3				100
7				100
11		100		200
20				200
24				200
25				200
30				200
Apr. 1				200
10				200
13				200
14				200
15				200
16				200
17				200
20				200
21				200
27				200

1931	1931 September Wheat
Feb. 28	300
Mar. 10	300
13	300
19	400
20	400
23	400
28	400
30	400

613
Comp. 407 (cont.)

UHLMANN GRAIN CO. (cont.)
(In thousands of bushels, i. e., "000" omitted)
1931 September Wheat
Account 57 Sp'l.

Date		Bought	Sold	Long	Short
1931					
Apr.	1				400
	2				400
	4				400
	10				400
	14				400
	15				400
	16				400
	18				400
	20	200			200
	21				200
	24				200
	25		200		400
	27				400
	30				400
May	1				400
	4				400
	16				400
	18		95		495
	19				495
	20				495
	21				495
	22				495
	23				495
	25				495
	26				495
	27				495
	28				495
	29				495
June	1				495
	2				495
	3				495
	4				495
	5				495
	6				495
	8				495
	9				495
	10				495
	11				495
	12	495			Even
	22		200		200
	23				200
	24	200			Even

614

Comp. 407 (cont.) UHLMANN GRAIN CO. (cont.)

(In thousands of bushels, i. e., "000" omitted)

1931 December Wheat

Account 57 Spl.

Date	Bought	Sold	Long	Short
1931				
June 18		400		400
20				400
22				400
23				400
26	200		..	..
July 1		95		495
2				495
3				495
6				495
7				495
8				495
9				495
10				495
11				495
13				495
14	495		..	..
29		200		200
30				200
31				200
Aug. 1				200
4				200
5				200
6				200
7	200		..	..

1931 1932 May Wheat

Aug. 31		200		200
Sept. 3				200
8				200
23				200
26				200
28				200
30				200
Oct. 3				200
6				200
8				200
9	200	200		200
15				200
16				200
17				200
19				200
20				200
21				200
22				200
23				200

615
Comp. 407 (cont.)

UHLMANN GRAIN CO. (cont.)
(In thousands of bushels, i. e., "000" omitted)
1932 May Wheat
Account 57 Spl.

Date	Bought	Sold	Long	Short
1931				
Oct. 24				200
26				200
27				200
28				200
29				200
30				200
31				200
Nov. 13				200
14				200
21				200
23		200		400
24				400
25		95		495
27				495
28				495
30				495
Dec. 1	200			295
2				295
3				295
4				295
5				295
7				295
8				295
9		200		495
10				495
11				495
12				495
14				495
15				495
16				495
17				495
18	300			195
21		100		295
22				295
23				295
24				295
29				295

616 (EXHIBIT 409)

Detailed analysis of the books and records of grain firms, disclosing transactions in accounts controlled by Mr. Cutten, but carried in the names of friends, relatives and associates, by day, account, firm, and future with total daily open long and short positions. Material portions of which are as follows:

ANALYSIS BY DAYS ON WHICH CUTTEN REPORTED

(In thousands of bushels, i. e., "000" omitted)

Date	Firm	Account	Bought	Sold	Long	Short
1931	1931 July Wheat					
Jan. 5	Jackson Bros., Boesel & Co.	R C	200		...	...
	Uhlmann Grain Co.	57 A				495
	Total—		200	...	...	495
Jan. 6	Uhlmann Grain Co.	57 A				495
Jan. 7	Uhlmann Grain Co.	57 A				495
Jan. 16	Uhlmann Grain Co.	57 A		205		395
Jan. 19	Uhlmann Grain Co.	57 A				395
Jan. 20	Uhlmann Grain Co.	57 A				395
Jan. 24	Uhlmann Grain Co.	57 A				395
Jan. 26	Uhlmann Grain Co.	57 A				395
Feb. 2	Jackson Bros., Boesel & Co.	R C		200		200
	Uhlmann Grain Co.	57 A				395
	Total—		...	200	...	595
Feb. 5	Jackson Bros., Boesel & Co.	R C	180			20
	Uhlmann Grain Co.	57 A				395
	Total—		180	...	...	415
Feb. 7	Jackson Bros., Boesel & Co.	R C				20
	Uhlmann Grain Co.	57 A				395
	Total—		...	...	...	415
Feb. 9	Jackson Bros., Boesel & Co.	R C				20
	Uhlmann Grain Co.	57 A				395
	Total—		...	...	...	415
Feb. 27	Jackson Bros., Boesel & Co.	R C				20
	Uhlmann Grain Co.	57 A				310
	Total—		...	...	...	330

617

ANALYSIS BY DAYS ON WHICH CUTTEN REPORTED

(In thousands of bushels, i. e., "000" omitted)

Date	Firm	Account	Bought	Sold	Long	Short
1931	1931 July Wheat (Continued)					
Mar. 14	Jackson Bros., Boesel & Co.	R C				65
	Uhlmann Grain Co.	57 A				310
	Total—		...	...	...	375
Mar. 18	Jackson Bros., Boesel & Co.	R C				65
	Uhlmann Grain Co.	57 A				310
	Total—		...	...	...	375
	1932 May Wheat					
Nov. 3	Bartlett-Frazier Co.	D S				400
	James Kidston & Co.	R C			325	
	Total—		...	...	325	400
Nov. 20	Bartlett-Frazier Co.	D S				400
	James Kidston & Co.	R C		110	...	...
	Total—		...	110	...	400
Nov. 30	Bartlett-Frazier Co.	D S	25			375
	Uhlmann Grain Co.	57 A				305
	Total—		25	...	...	680
Dec. 1	Bartlett-Frazier Co.	D S	100			275
	Uhlmann Grain Co.	57 A				305
	Total—		100	...	...	580
Dec. 5	Uhlmann Grain Co.	57 A				305
Dec. 7	Uhlmann Grain Co.	57 A				305
Dec. 8	Uhlmann Grain Co.	57 A				305
Dec. 9	Uhlmann Grain Co.	57 A				305
Dec. 14	Uhlmann Grain Co.	57 A				405
Dec. 16	Uhlmann Grain Co.	57 A				405
Dec. 18	Uhlmann Grain Co.	57 A				405
Dec. 19	Uhlmann Grain Co.	57 A				405
Dec. 21	Uhlmann Grain Co.	57 A				405
Dec. 22	Uhlmann Grain Co.	57 A				405
Dec. 23	Uhlmann Grain Co.	57 A				405
Dec. 24	Uhlmann Grain Co.	57 A				405
Dec. 29	Uhlmann Grain Co.	57 A				405

BARTLETT-FRAZIER CO.

(In thousands of bushels, i. e., "000" omitted)

1930 July Wheat

Date	Account M C				Account D S				Account Mrs. No. 7				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1930																
Feb. 4										5		5		5		5
5												5				5
6												5				5
7												5				5
8												5				5
10												5				5
11												5				5
13												5				5
14												5				5
15		200		200								5		200		205
17				200								5				205
18				200								5				205
19				200								5				205
20				200								5				205
21				200								5				205
24				200								5				205
25				200								5				205
26	200		...	...					5		...	...	205		...	...
Mar. 6		200		200	400			400						600		600
7				200				400								600
8				200				400								600
10				200				400								600
11				200				400								600
12				200				400								600
13				200				400								600
14				200				400								600
15				200				400								600
17				200				400								600
18				200				400								600
19				200				400								600
20				200				400								600
21				200				400								600
22				200				400								600

Complainant's Exhibit 409.

Comp. 409 (cont.)

BARTLETT-FRAZIER CO. (cont.)

(In thousands of bushels, i. e., "000" omitted)

1930 July Wheat

Date	Account M C				Account D S				Account Mrs. No. 7				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1930																
Mar. 24				200				400								600
25				200				400								600
26				200				400								600
27				200				400								600
28				200				400								600
29				200				400								600
31				200				400								600
Apr. 1				200				400								600
2	300		100		600		200						900		300	
3	300		400				200						300		600	
4			400				200								600	
5			400				200								600	
7			400				200								600	
8			400				200								600	
9			400				200								600	
10			400				200								600	
11			400				200								600	
12		200	200			200	...	...						400	200	
16			200												200	
19			200												200	
21			200												200	
23			200												200	
24			200												200	
28			200												200	
29			200												200	
30			200												200	
May 3			200												200	
7			200												200	
8			200												200	
22			200												200	
26			200												200	

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Comp. 409 (cont.) BARTLETT-FRAZIER CO. (cont.)

(In thousands of bushels, i. e., "000" omitted)

1930 September Wheat

Date	Account M C				Account D S				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1930												
Apr. 22		200		200				200		200		400
23				200				200				400
24				200				200				400
25				200				200				400
26				200				200				400
28				200				200				400
29				200				200				400
30				200				200				400
May 1				200				200				400
2				200				200				400
3				200				200				400
5				200				200				400
6				200				200				400
7		200		400				200		200		600
8				400				200				600
9				400		200		400		200		800
10				400				400				800
12				400				400				800
13				400				400				800
14				400				400				800
15				400				400				800
16				400				400				800
17				400				400				800
19				400				400				800
20				400				400				800
21				400				400				800
22				400				400				800
23				400				400				800
24				400				400				800
26				400				400				800
27				400				400				800
28				400				400				800
29				400				400				800
31				400				400				800
June 2				400				400				800
3				400				400				800
4				400				400				800
5				400				400				800
6				400				400				800
7				400				400				800
9				400				400				800
10				400				400				800
11				400				400				800
12				400				400				800

621
Comp. 409 (cont.)

BARTLETT-FRAZIER CO. (cont.)
(In thousands of bushels, i. e., "000" omitted)

1930 September Wheat

Date	Account M C Bought	Sold	Long	Short	Account D S Bought	Sold	Long	Short	Total Bought	Sold	Long	Short
1930												
June 13				400				400				800
14		10		410				400		10		810
16				410				400				810
17				410				400				810
18				410		200		600		200		1010
19				410				600				1010
20				410				600				1010
21				410				600				1010
23				410				600				1010
24				410				600				1010
25				410				600				1010
26	410		Even		600		Even		1010			Even

1930 December Wheat
Account D S

1930				
June 21		600		600
23				600
24				600
26	600	..		..
Aug. 4	200		200	
5			200	
6	200		400	
7			400	
8			400	
9			400	
11		400	..	..
Nov. 1		200		200
3				200
5				200
6				200
7	200		..	..

1932 May Wheat
Account D S

1931				
Aug. 25				400
31				400
Sept. 3				400
8				400
9				400
23				400
26				400
28				400
30				400

622

Comp. 409 (cont.) BARTLETT-FRAZIER CO. (cont.)

(In thousands of bushels, i. e., "000" omitted)

1932 May Wheat

Date	Account D S Bought	Sold	Long	Short
1931				
Oct. 3				400
6				400
8				400
9				400
15				400
16				400
17				400
19				400
20				400
21				400
22				400
23				400
24				400
26				400
27				400
28				400
29				400
30				400
31				400
Nov. 13				400
14				400
21				400
23				400
24				400
25				400
30		25		375
Dec. 1	100			275
2				275
3	210			65
4	65			..

623
Comp. 409 (cont.)

CLEMENT, CURTIS & CO.
(In thousands of bushels, i. e., "000" omitted)

1930 May Wheat

Accout Mn C

Date		Bought	Sold	Long	Short
1930					
Jan.	13		200		200
	14				200
	15				200
	16		200		400
	17				400
	18				400
	20		100		500
	21				500
	22				500
	23				500
	24				500
	25				500
	27				500
	28				500
	29	200			300
	30				300
	31				300
Feb.	1				300
	3		200		500
	4				500
	5				500
	6	300			200
	7	200			

1930 July Wheat

1930					
Jan.	27		200		200
	28				200
	29				200
	30				200
	31		200		400
Feb.	1				400
	3		200		600
	4		200		800
	5				800
	6				800
	7				800
	8				800
	10				800
	11	100			700
	13	200			500
	14				500
	15				500
	17				500
	18				500

624

Comp. 409 (cont.) CLEMENT, CURTIS & CO. (cont.)

(In thousands of bushels, i. e., "000" omitted)

1930 July Wheat

Account M C

Date	Bought	Sold	Long	Short
1930				
Feb. 19				500
20				500
21				500
24				500
25				500
26	500		..	..
Mar. 12		100		100
13				100
14				100
15				100
17				100
18				100
19				100
20				100
21				100
22	100		..	..

1930 September Wheat

June 16		200		200
17				200
18				200
19				200
20				200
21				200
23				200
26	200		Even	

1930 December Wheat

June 14		200		200
16				200
20				200
21		200		400
23				400
24				400
26	400		..	..
30		300		300
July 1				300
3				300
7		200		500
8		200		700
9	700		..	..

625
Comp. 409 (cont.)

CLEMENT, CURTIS & CO. (cont.)
(In thousands of bushels, i. e., "000" omitted)

1930 December Wheat

Date	Account R C				Account M C				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1930												
Nov. 3		150		150						150		150
5				150								150
6				150								150
7				150								150
12	150		..	..					150		..	..

626
Comp. 409 (cont.)

JACKSON BROS., BOESEL & COMPANY
(In thousands of bushels, i. e., "000" omitted)

1930 September Wheat

Date	Account C-211 Bought	Sold	Long	Short	Account R C Bought	Sold	Long	Short	Total Bought	Sold	Long	Short
1930												
May 26		250		250						250		250
June 2				250								250
7	90			160					90			160
9				160								160
10	125			35					125			35
11	35		Even						35		Even	
13						200		200		200		200
14					20	200		380	20	200		380
16								380				380
18					135			245	135			245
20					245	200		200	245	200		200
21								200				200
23								200				200
26								200				200
27					200		Even		200		Even	

1930 December Wheat
R C

June 20	200	200		200
21		100		300
23				300
24				300
26				300
27	300			
July 1		280		280
3	280			
Aug. 26	100		100	
27			100	
28			100	
Sept. 2			100	
4			100	
11			100	
15			100	
16			100	
18			100	
19			100	
20			100	

1931 July Wheat
R C

Jan. 2		200		200
3				200
Feb. 3				200
10				20
14				20
16				20
19				20

627
Comp. 409 (cont.) JACKSON BROS., BOESEL & COMPANY (cont.)
(In thousands of bushels, i. e., "000" omitted)

1931 July Wheat

Account R C

Date	Bought	Sold	Long	Short
1931				
Feb. 20				20
26				20
28				20
Mar. 3		45		65
7				65
11				65
20				65
24				65
25				65
30		100		165
Apr. 1				165
10				165
13				165
15				165
16				165
17				165
20				165
21				165
27	165		Even	

1931 September Wheat

1931				
Apr. 25		100		100
27		200		300

628

Comp. 409 (cont.)

F. B. KEECH & CO.

(In thousands of bushels, i. e., "000" omitted)

1930 July Wheat

Date	Account R J C Bought	Sold	Long	Short	Account M C Bought	Sold	Long	Short	Bought	Sold	Long	Short
1930												
Mar. 10		200		200								
11				200								
12		100		300								
24				300								
25				300								
28	100			200								
Apr. 2				200								
3				200								
4				200								
9				200								
12				200								
16				200								
19				200								
21				200								
23				200								
24				200								
28	200			..								

1930 September Wheat

1930												
Apr. 28	100		Even									
June 16						300		300				
18						200		500				
19								500				
20								500				
21								500				
23					10			490				
24								490				
25								490				
26								490				
27								490				
28								490				
30								490				
July 1								490				
2					490		Even					

F. B. KEECH & CO. (cont.)
(In thousands of bushels, i. e., "000" omitted)
1930 December Wheat

Date	Account R J C				Account E M L C				Account M C				Account 97				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1930																				
June 21		400		400						200		200						600		600
23				400								200								600
24				400		200		200				200								600
26				400				200				200						200		800
27				400				200				200								800
30				400				200				200								800
July 1				400				200				200								800
2				400				200				200								800
3				400				200				200								800
7				400		200		400		200		400						400		1200
8				400				400				400								1200
9	400		..	..				400	200			200					600			600
10								400				200								600
11		400		400				400				200						400		1000
15				400																400
16	400		..	..													400			..
17	400		400														400		400	
18			400																400	
19			400																400	
21			400																400	
22			400																400	
23			400																400	
24			400																400	
25			400																400	
26			400																400	
28		400	..	..														400	..	..
Oct. 25		300		300														300		300
27				300																300
28				300																300
29				300																300
30				300																300
31				300																300

Complainant's Exhibit 409.

630

Comp. 409 (cont.)

F. B. KEECH & CO. (cont.)

(In thousands of bushels, i. e., "000" omitted)

1930 December Wheat

Date	Account R J C Bought	Sold	Long	Short	Account 97 Bought	Sold	Long	Short	Total Bought	Sold	Long	Short
1930												
Nov. 1				300								300
3				300								300
5				300								300
6				300								300
7				300								300
8				300								300
10				300								300
12				300								300
13	300		..	..					300		..	..
1930					1931 May Wheat							
Sept. 27						200	200			200		200
29							200					200
30							200					200
Nov. 14		200		400						200		400
17				400								400
18				400								400

631

Comp. 409 (cont.)

JAS. KIDSTON & CO.

(In thousands of bushels, i. e., "000" omitted)

1932 May Wheat

Date	Account R C Bought	Sold	Long	Short
1931				
Oct. 29	25		25	
30	100		125	
31	200		325	
Nov. 2			325	
3			325	
4			325	
5			325	
6			325	
7			325	
9			325	
10			325	
12			325	
13			325	
14		15	310	

632
Comp. 409 (cont.)

C. D. ROBBINS & CO.
(In thousands of bushels, i. e., "000" omitted)

1930 December Wheat

Date	Account R J C				Account H C				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1930												
Aug. 11		300		300						300		300
15	600		...	...					600		...	...
18		300		300						300		300
20				300								300
23				300								300
25				300								300
26	300		...	...					300		...	...
Sept. 2		490		490						490		490
4				490								490
11				490								490
15				490		400		400		400		890
16	490		...	...	400		...	...	890		...	...

633

Comp. 409 (cont.)

UHLMANN GRAIN CO.

(In thousands of bushels, i. e., "000" omitted)

1931 July Wheat

Account 57-A Sp.

Date		Bought	Sold	Long	Short
1930					
Dec.	11		10		10
	13		200		210
	15				210
	16				210
	17		200		410
	20				410
	22		85		495
	23				495
	24				495
	26				495
	27				495
	29				495
	30				495
	31				495
1931					
Jan.	2				495
	3				495
	5				495
	6				495
	7				495
	8				495
	9				495
	10				495
	12				495
	13				495
	14	305			190
	15				190
	16		205		395
	17				395
	19				395
	20				395
	21				395
	22				395
	23				395
	24				395
	26				395
	27				395
	28				395
	29				395
	30				395
	31				395

634

Comp. 409 (cont.)

UHLMANN GRAIN CO. (cont.)

(In thousands of bushels, i. e., "000" omitted)

1931 July Wheat

Date	Account 57-A Sp. Bought	Sold	Long	Short
1931				
Feb. 2				395
3				395
4				395
5				395
6				395
7				395
9				395
10	85			310
11				310
14				310
16				310
19				310
20				310
26				310
28				310
Mar. 3				310
7				310
11				310
20				310
24				310
25				310
30				310
Apr. 1				310
10				310
13				310
15				310
16				310
17				310
20				310
21				310
27				310

1931 September Wheat

May 18		5		5
19				5
20				5
21				5
22				5
23				5
25				5
26				5
27				5
28				5
29				5

635

Comp. 409 (cont.) UHLMANN GRAIN CO. (cont.)

(In thousands of bushels, i. e., "000" omitted)

1931 September Wheat

Account 57-A Sp.

Date		Bought	Sold	Long	Short
1931					
June	1				5
	2				5
	3		200		205
	4				205
	5				205
	6				205
	8				205
	9				205
	10				205
	11				205
	12	205		....	...

1931 December Wheat

1931					
July	1		105		105
	2				105
	3		100		205
	6				205
	7				205
	8				205
	9				205
	10				205
	11				205
	13				205
	14	205		...	...

1932 May Wheat

1931					
Nov.	24		200		200
	25		105		305
	27				305
	28				305
	30				305
Dec.	1				305
	2				305
	3				305
	4				305
	5				305
	7				305
	8				305
	9				305
	10		100		405
	14				405
	16				405
	18				405
	21				405
	22				405
	23				405
	24				405
	29				405

Comp. 408

WHEAT FUTURES ACCOUNTS OF ARTHUR W. CUTTEN 1930-1931

637

Summary by days of wheat futures accounts definitely identified as belonging to Arthur W. Cutten for the years 1930 and 1931
(In thousands of bushels, i. e., "000" omitted)

Date	May				July				September				December				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1930																				
Jan. 10	....	400	....	400														400	....	400
11	....	....	....	400																400
Sunday																				
13	....	....	....	400																400
14	....	....	....	400																400
15	300	100	....	200													300	100	....	200
16	....	600	....	800													....	600	....	800
17	....	100	....	900													....	100	....	900
18	....	....	....	900													....	....	....	900
Sunday																				
20	....	....	....	900													....	....	....	900
21	....	....	....	900													....	....	....	900
22	....	....	....	900													....	....	....	900
23	....	....	....	900													....	....	....	900
24	350	....	....	550													350	....	....	550
25	....	....	....	550													....	....	....	550
Sunday																				
27	140	....	....	410	....	200	....	200									140	200	....	610
28	....	....	....	410	....	....	....	200									....	....	....	610
29	....	200	....	610	....	200	....	400									....	400	....	1,010
30	....	....	....	610	....	....	....	400									....	....	....	1,010
31	....	....	....	610	....	....	....	400									....	....	....	1,010
Feb. 1	....	....	....	610	....	155	....	555									....	155	....	1,165
Sunday																				
3	300	200	....	510	155	200	....	600									455	400	....	1,110
4	....	....	....	510	....	1,195	....	1,795									....	1,195	....	2,305
5	....	200	....	710	....	....	....	1,795									....	200	....	2,505
6	300	....	....	410	....	560	....	2,355									300	560	....	2,765
7	510	....	100	....	....	....	....	2,355									510	....	100	2,355
8	....	....	100	....	....	....	....	2,355									....	....	100	2,355

Complainant's Exhibit 408.

| | | |

Summary by days of wheat futures accounts definitely identified as belonging to Arthur W. Cutten for the years 1930 and 1931
(In thousands of bushels, i. e., "000" omitted)

Date	May				July				September				December				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1930																				
Sunday																				
24						400		800				500						400		1,300
25					400			400				500					400			900
26								400				500								900
27								400				500								900
28								400				500								900
29								400				500								900
Sunday																				
31								400				500								900
638																				
April 1								400				500								900
2					600		200					500					600		200	500
3					400		600					500					400		600	500
4					1,000		1,600					500					1,000		1,600	500
5							1,600					500							1,600	500
Sunday																				
7							1,600					500							1,600	500
8							1,600					500							1,600	500
9					600		2,200					500					600		2,200	500
10							2,200					500							2,200	500
11							2,200					500							2,200	500
12						1,000	1,200					500						1,000	1,200	500
Sunday																				
14							1,200					500							1,200	500
15							1,200					500							1,200	500
16						1,500	500	800				500						1,500	500	1,300
17							500	800				500							500	1,300
Holiday																				
19					1,090	120	1,080	410				500					1,090	120	1,080	910
Sunday																				
21						80	1,000	410				500						80	1,000	910
22						200	800	410		300		800						500	800	1,210
23						500	300	410				800						500	300	1,210
24							300	410	400	400		800					400	400	300	1,210

25				300	410				800				300	1,210	
26				300	410				800				300	1,210	
Sunday															
28		910	1,200	200	600	600	400		600		1,510	1,600	200	1,200	
29		350		200	250	290			310		640		200	560	
30		550		500		110			200		660		500	200	
May 1				500					200				500	200	
2				500					200				500	200	
3		250	250	500		250	250		200		500	500	500	200	
Sunday															
5				500					200				500	200	
6			850	100	450		250		450			1,100	100	900	
7		1,050		700		250	800		1,000		1,300	800	700	1,000	
8				700			200		1,200			200	700	1,200	
9				700			400		1,600			400	700	1,600	
10				700			75		1,675			75	700	1,675	
Sunday															
12			210	600	110				1,675			210	600	1,785	
13				600	110				1,675				600	1,785	
14				600	110				1,675				600	1,785	
15			1,050		560		220		1,895			1,270		2,455	
16					560				1,895					2,455	
17					560				1,895					2,455	
Sunday															
19					560				1,895					2,455	
20		200			360	50			1,845		250			2,205	
21					360				1,845					2,205	
22			450		810		250		2,095			700		2,905	
23					810				2,095					2,905	
24					810				2,095					2,905	
Sunday															
26					810		200		2,295			200		3,105	
27					810				2,295					3,105	
28					810				2,295					3,105	
29					810				2,295					3,105	
Holiday															
31					810				2,295					3,105	
June															
Sunday															
2		200			610	200			2,095		400			2,705	
3					610				2,095					2,705	
4					610				2,095					2,705	

Summary by days of wheat futures accounts definitely identified as belonging to Arthur W. Cutten for the years 1930 and 1931
(In thousands of bushels, i. e., "000" omitted)

Date	May				July				September				December				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1930																				
5								610				2,095								2,705
6								610				2,095								2,705
7								610				2,095								2,705
Sunday																				
9								610				2,095								2,705
10								610				2,095								2,705
11					110			500	250			1,845					360			2,345
12					300			200	170			1,675					470			1,875
13								200	200	400		1,875		200		200	200	600		2,275
14								200	400	390		1,865		400		600	400	790		2,665
Sunday																				
16								200		200		2,065		200		800		400		3,065
17								200				2,065				800				3,065
18						200		400	300			1,765	50	200		950	350	400		3,115
19								400				1,765				950				3,115
20								400	100			1,665	100			850	200			2,915
21								400		100		1,765		500		1,350		600		3,515
Sunday																				
23								400		10		1,775		200		1,550		210		3,725
24								400				1,775				1,550				3,725
25								400				1,775				1,550				3,725
26					200			200	990			785	200			1,350	1,390			2,335
27								200				785				1,350				2,335
28								200				785				1,350				2,335
Sunday																				
30								200				785		400		1,750		400		2,735
639																				
July 1								200	200	200		785				1,750	200	200		2,735
2					200				210			575				1,750	410			2,325
3												575	120			1,630	120			2,205
Holiday																				
Holiday																				

Sunday 7			200		775		200		1,830		400		2,605
8					775				1,830				2,605
9		500			275	840			990	1,340			1,265
10			25		275	160			830	160			1,105
11			25		300		400		1,230		425		1,530
12					300				1,230				1,530
Sunday 14													
15			95		395				1,230		95		1,625
16					395	200			1,030	200			1,425
17					395	600			430	600			825
18					395	1,530		1,200	100	1,530		1,200	495
19					395		300	900	100		300	900	495
Sunday 21					395	700		1,600	100	700		1,600	495
22					395		950	650	100		950	650	495
23					395			650	100			650	495
24					395			650	100			650	495
25					395			650	100			650	495
26		395				100		650		495		650	
Sunday 28								650				650	
29							650				650		
30						1,100	1,100	200	200	1,100	1,100	200	200
31						400	1,000		600	400	1,000		600
Aug. 1									600				600
2									600				600
Sunday 4						1,600		1,000		1,600		1,000	
5						200		1,200		200		1,200	
6						2,200	400	3,000		2,200	400	3,000	
7						100		3,100		100		3,100	
8						600		3,700		600		3,700	
9							1,400	2,300			1,400	2,300	
Sunday 11							1,300	1,000			1,300	1,000	
12							400	800	200		400	800	200
13							1,000	400	800		1,000	400	800
14								400	800			400	800
15						1,600		1,200		1,600		1,200	
16								1,200				1,200	

Summary by days of wheat futures accounts definitely identified as belonging to Arthur W. Cutten for the years 1930 and 1931
(In thousands of bushels, i. e., "000" omitted)

Date	May				July				September				December				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1930																				
Sunday																				
18													....	200	1,000	....	....	200	1,000	....
19													....	....	1,000	....	....	....	1,000	....
20													200	....	1,200	....	200	....	1,200	....
21													....	....	1,200	....	....	....	1,200	....
22													....	....	1,200	....	....	....	1,200	....
23													300	....	1,500	....	300	....	1,500	....
Sunday																				
25	200	....	200										200	....	1,700	....	400	....	1,900	....
26	....	....	200										200	....	1,900	....	200	....	2,100	....
27	....	....	200										175	....	2,075	....	175	....	2,275	....
28	....	....	200										....	175	1,900	....	....	175	2,100	....
29	....	....	200										....	....	1,900	....	....	....	2,100	....
Holiday																				
Sunday																				
Sept.																				
Holiday					March															
2	....	....	200		....	....	200	200					....	450	1,500	50	....	650	1,700	250
3	....	....	200					200					....	....	1,500	50	....	....	1,700	250
4	....	....	200					200					....	600	1,300	450	....	600	1,500	650
5	....	....	200					200					....	200	1,300	650	....	200	1,500	850
6	....	....	200					200					....	....	1,300	650	....	....	1,500	850
Sunday																				
8	....	....	200					200					....	400	900	650	....	400	1,100	850
9	....	....	200					200					....	....	900	650	....	....	1,100	850
10	....	....	200					200					....	....	900	650	....	....	1,100	850
11	....	....	200					200					....	400	900	1,050	....	400	1,100	1,250
12	....	....	200					200					....	....	900	1,050	....	....	1,100	1,250
13	....	....	200					200					....	....	900	1,050	....	....	1,100	1,250
Sunday																				
15	....	....	200					200					....	400	900	1,450	....	400	1,100	1,650
16	....	....	200					200					1,050	200	900	600	1,050	200	1,100	800
17	....	....	200					200					....	....	900	600	....	....	1,100	800

18			200				200		400	....	900	200	400	....	1,100	400
19			200				200		300	....	1,200	200	300	....	1,400	400
20			200				200		....	300	900	200	....	300	1,100	400
Sunday																
22			200	....	200				....	....	900	200	200	....	1,100	200
23			200								900	200	....	....	1,100	200
24	....	800	....	600					....	1,100	....	400	....	1,900	....	1,000
25				600					....	....	....	400	....	....	....	1,000
26	....	200	....	800					....	200	....	600	....	400	....	1,400
27				800								600				1,400
Sunday																
29	200			600					400	....	....	200	600	....	....	800
30	200			400					200	....	....	....	400	....	....	400
640																
Oct. 1	400	....	....						400	400	....	....	800	400	....	....
2																
3	200	200														
4									300	300	....	....	500	500	....	....
Sunday																
6																
7																
8									200	200	....	....	200	200	....	....
9									....	....	....	....	....	....	....	....
10	100	....	100						....	....	....	....	....	....	....	....
11			100						....	300	....	300	100	300	100	300
Sunday									30	....	....	270	30	....	100	270
Holiday																
14			100						....	....	....	270	....	....	100	270
15			100						....	....	....	270	....	....	100	270
16			100						....	200	....	470	....	200	100	470
17			100						....	....	....	470	....	....	100	470
18			100						....	....	....	470	....	....	100	470
Sunday																
20			100						....	200	....	670	....	200	100	670
21			100						200	200	....	670	200	200	100	670
22			100						400	....	....	270	400	....	100	270
23			100						....	300	....	570	....	300	100	570
24			100						....	....	....	570	....	....	100	570
25	....	200	100	200					190	500	....	880	190	700	100	1,080

Summary by days of wheat futures accounts definitely identified as belonging to Arthur W. Cutten for the years 1930 and 1931
(In thousands of bushels, i. e., "000" omitted)

Date	May				July				September				December				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1930																				
Sunday																				
27	.....		100	200										200	....	1,080	....	200	100	1,280
28	.....		100	200									....	395	....	1,475	....	395	100	1,675
29	.....		100	200									600	400	....	1,275	600	400	100	1,475
30	.....		100	200									....	....	....	1,275	....	....	100	1,475
31	.....		100	200									200	400	....	1,475	200	400	100	1,675
Nov. 1	.....		100	200									....	....	....	1,475	....	....	100	1,675
Sunday																				
3	.....		100	200									200	450	....	1,725	200	450	100	1,925
Holiday																				
5	....	300	....	400									700	300	....	1,325	700	600	....	1,725
6	.....			400									....	200	....	1,525	....	200	....	1,925
7	.....			400									100	....	....	1,425	100	....	....	1,825
8	.....			400									....	....	....	1,425	....	....	....	1,825
Sunday																				
10	.....			400									....	....	....	1,425	....	....	....	1,825
Holiday																				
12	.....			400									830	....	200	795	830	....	200	1,195
13	.....			400									795	....	200	....	795	....	200	400
14	200	1,600	....	1,800									....	....	200	....	200	1,600	200	1,800
15	.....			1,800	....	400	....	400					....	....	200	....	....	400	200	2,200
Sunday																				
17	700	....	....	1,100	.....			400	.....				....	....	200	....	700	....	200	1,500
18	200	....	....	900	....	100	....	500	.....				....	....	200	....	200	100	200	1,400
19	800	200	100	400	.....			500	.....				....	200	....	....	800	400	100	900
20	600	140	300	140	.....			500	.....								600	140	300	640
21	340	200	300		.....			500	.....								340	200	300	500
22	....	....	300		.....			500	.....								....	....	300	500
Sunday																				
24	....	300	....		.....			500	.....								....	300	....	500
25	200	....	200		.....			500	.....								200	....	200	500
26	....	200	....		.....			500	.....								....	200	....	500

Holiday																				
28	200	....	200	....	.....	.....	500	.....	.....	.....	.....	.....	.....	.....	.....	200	....	200	500
29	....	200	....	....	.....	.....	500	.....	.....	.....	.....	.....	.....	.....	.....	....	200	....	500
Sunday																				
Dec. 1	....	....	....	....	....	....	500	.....	.....	.....	.....	.....	.....	.....	.....	....	....	....	500
2	....	200	....	200	....	....	500	.....	.....	.....	.....	.....	.....	.....	.....	....	200	....	700
3	....	....	....	200	....	....	500	.....	.....	.....	.....	.....	.....	.....	.....	....	....	....	700
4	....	....	....	200	....	....	500	.....	.....	.....	.....	.....	.....	.....	.....	....	....	....	700
5	....	....	....	200	....	....	500	.....	.....	.....	.....	.....	.....	.....	.....	....	....	....	700
6	....	200	....	400	....	200	700	.....	.....	.....	.....	.....	.....	.....	.....	....	400	....	1,100
Sunday																				
8	....	....	....	400	....	200	900	.....	.....	.....	.....	.....	.....	.....	.....	....	200	....	1,300
9	....	....	....	400	....	....	900	.....	.....	.....	.....	.....	.....	.....	.....	....	....	....	1,300
10	....	195	....	595	....	....	900	.....	.....	.....	.....	.....	.....	.....	.....	....	195	....	1,495
11	200	....	....	395	....	190	1,090	.....	.....	.....	.....	.....	.....	.....	.....	200	190	....	1,485
12	5	....	....	390	....	....	1,090	.....	.....	.....	.....	.....	.....	.....	.....	5	....	....	1,480
13	....	....	....	390	....	100	1,190	.....	.....	.....	.....	.....	.....	.....	.....	....	100	....	1,580
Sunday																				
15	200	....	....	190	....	200	1,390	.....	.....	.....	.....	.....	.....	.....	.....	200	200	....	1,580
16	....	....	....	190	....	100	1,490	.....	.....	.....	.....	.....	.....	.....	.....	....	100	....	1,680
17	....	....	....	190	....	100	1,590	.....	.....	.....	.....	.....	.....	.....	.....	....	100	....	1,780
18	190	....	....	....	....	200	1,790	.....	.....	.....	.....	.....	.....	.....	.....	190	200	....	1,790
19	.....	.....	.....	.....	.....	....	1,790	.....	.....	.....	.....	.....	.....	.....	.....	....	....	....	1,790
20	.....	.....	.....	.....	100	100	1,790	.....	.....	.....	.....	.....	.....	.....	.....	100	100	....	1,790
Sunday																				
22	.....	.....	.....	.....	....	105	1,895	.....	.....	.....	.....	.....	.....	.....	.....	....	105	....	1,895
23	.....	.....	.....	.....	.....	.....	1,895	.....	.....	.....	.....	.....	.....	.....	.....	....	....	....	1,895
24	.....	.....	.....	.....	.....	.....	1,895	.....	.....	.....	.....	.....	.....	.....	.....	....	....	....	1,895
Holiday																				
26	.....	.....	.....	.....	....	435	2,330	.....	.....	.....	.....	.....	.....	.....	.....	....	435	....	2,330
27	.....	.....	.....	.....	.....	.....	2,330	.....	.....	.....	.....	.....	.....	.....	.....	....	....	....	2,330
Sunday																				
29	.....	.....	.....	.....	260	500	2,570	.....	.....	.....	.....	.....	.....	.....	.....	260	500	....	2,570
30	.....	.....	.....	.....	....	....	2,570	.....	.....	.....	.....	.....	.....	.....	.....	....	....	....	2,570
31	.....	.....	.....	.....	.....	.....	2,570	.....	.....	.....	.....	.....	.....	.....	.....	....	....	....	2,570
Total	9,435	9,435			12,880	15,450		5,865	5,865			20,970	20,970			49,350	51,920			
					200	200	(March)													

Summary by days of wheat futures accounts definitely identified as belonging to Arthur W. Cutten for the years 1930 and 1931
(In thousands of bushels, i. e., "000" omitted)

Date	May				July				September				December				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1931																				
Jan.																				
Holiday																				
2					630	100	....	2,040									630	100	....	2,040
3								2,040												2,040
Sunday																				
5					500	....	70	1,610									500	....	70	1,610
6					....	460	....	2,000									....	460	....	2,000
7					380	....	....	1,620									380	....	....	1,620
8					50	....	50	1,620									50	....	50	1,620
9							50	1,620											50	1,620
10							50	1,620											50	1,620
Sunday																				
12					....	235	....	1,805									....	235	....	1,805
13								1,805												1,805
14					695	....	....	1,110									695	....	....	1,110
15					....	400	....	1,510									....	400	....	1,510
16					....	795	....	2,305									....	795	....	2,305
17					75	200	....	2,430									75	200	....	2,430
Sunday																				
19					....	420	....	2,850									....	420	....	2,850
20					170	100	....	2,780									170	100	....	2,780
21								2,780												2,780
22								2,780												2,780
23					100	100	....	2,780									100	100	....	2,780
24					....	100	....	2,880									....	100	....	2,880
Sunday																				
26					....	300	....	3,180									....	300	....	3,180
27								3,180												3,180
28								3,180												3,180
29								3,180												3,180
30								3,180												3,180
31					100	....	....	3,080									100	....	....	3,080

Complainant's Exhibit 408.

Sunday																						
2							200		3,280										200		3,280	
3					395				2,885									395			2,885	
4									2,885												2,885	
5					395				2,490									395			2,490	
6									2,490												2,490	
7		100		100			100		2,590										200		2,690	
Sunday																						
9			100		600				1,990									600			2,090	
10			100		475				1,515									475			1,615	
11			100						1,515												1,615	
Holiday																						
13			100						1,515												1,615	
14			100				450		1,965		170		170						620		2,235	
Sunday																						
16			100		455		400		1,910		300		470					455	700		2,480	
17			100						1,910				470								2,480	
18			100						1,910				470								2,480	
19			100				400		2,310				470						400		2,880	
20			100		140				2,170		200		270					340			2,540	
21			100						2,170				270								2,540	
Sunday																						
Holiday																						
24			100						2,170		400		670						400		2,940	
25			100						2,170				670								2,940	
26			100		300		200		2,070				670					300	200		2,840	
27			100						2,070		300		970						300		3,140	
28			100		410		200		1,860		200		1,170					410	400		3,130	
March																						
Sunday																						
2			100						1,860				1,170								3,130	
3			100				165		2,025				1,170						165		3,295	
4			100						2,025				1,170								3,295	
5			100						2,025				1,170								3,295	
6			100						2,025				1,170								3,295	
7			100				100		2,125				1,170						100		3,395	
Sunday																						
9			100						2,125				1,170								3,395	
10			100						2,125		100		1,270						100		3,495	
11	100						100		2,225				1,270					100	100		3,495	
12									2,225				1,270								3,495	
13									2,225		200		1,470						200		3,695	

Summary by days of wheat futures accounts definitely identified as belonging to Arthur W. Cutten for the years 1930 and 1931
(In thousands of bushels, i. e., "000" omitted)

Date	May				July				September				December				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1931																		300		3,995
14						100		2,325		200		1,670								
Sunday																				3,995
16								2,325				1,670								3,995
17								2,325				1,670						100		4,095
18						100		2,425				1,670						100		4,195
19								2,425		100		1,770						300		4,495
20						100		2,525		200		1,970								4,495
21								2,525				1,970								
Sunday																		100		4,595
23								2,525		100		2,070						100		4,695
24						100		2,625				2,070						100		4,795
25						100		2,725				2,070								4,795
26								2,725				2,070								4,795
27								2,725				2,070								4,795
28								2,725		100		2,170						100		4,895
Sunday																		200		5,095
30						100		2,825		100		2,270						100		5,195
31						100		2,925				2,270								
32																				
April 1					300	100		2,725		200		2,470					300	300		5,195
2								2,725		250		2,720						250		5,445
Holiday																				
4								2,725		100		2,820						100		5,545
Sunday																				5,545
6								2,725				2,820								5,545
7								2,725				2,820		100		100		100		5,645
8								2,725				2,820				100				5,645
9								2,725				2,820				100				5,645
10						200		2,925		450		3,270				100		650		6,295
11						200		2,925				3,270				100				6,295
Sunday																				
13					300			2,625				3,270				100	300			5,995
14					550		60	2,135	100			3,170				100	650		60	5,405
15					650		110	1,535	200			2,970				100	850		110	4,605

16			600		160	985	455			2,515				100	1,055		160	3,600
17			220		160	765				2,515				100	220		160	3,380
18					160	765	600			1,915				100	600		160	2,780
Sunday																		
20			265		160	500	400			1,515	100		100	100	765		260	2,115
21				100	60	500		100		1,615		100		100		300	60	2,215
22					60	500				1,615				100			60	2,215
23					60	500				1,615		400		500		400	60	2,615
24					60	500		700		2,315		600		1,100		1,300	60	3,915
25					60	500		500		2,815		300		1,400		800	60	4,715
Sunday																		
27			200		60	300				2,815				1,400	200		60	4,515
28					60	300				2,815		100		1,500		100	60	4,615
29					60	300				2,815				1,500			60	4,615
30			100		60	200	900			1,915	400			1,100	1,400		60	3,215
May 1					60	200	300			1,615	200			900	500		60	2,715
2					60	200				1,615				900			60	2,715
Sunday																		
4					60	200	400			1,215				900	400		60	2,315
5					60	200				1,215				900			60	2,315
6					60	200				1,215				900			60	2,315
7					60	200				1,215				900			60	2,315
8					60	200				1,215				900			60	2,315
9					60	200				1,215				900			60	2,315
Sunday																		
11					60	200				1,215				900			60	2,315
12					60	200				1,215				900			60	2,315
13					60	200				1,215				900			60	2,315
14					60	200				1,215				900			60	2,315
15					60	200				1,215				900			60	2,315
16					60	200		100		1,315		100		1,000		200	60	2,515
Sunday																		
18					60	200		195		1,510				1,000		195	60	2,710
19					60	200				1,510				1,000			60	2,710
20					60	200				1,510		100		1,100		100	60	2,810
21					60	200				1,510		200		1,300		200	60	3,010
22					60	200				1,510				1,300			60	3,010
23					60	200	100	200		1,610		100		1,400	100	300	60	3,210
Sunday																		
25					60	200				1,610				1,400			60	3,210
26					60	200	200			1,410	410			990	610		60	2,600
27					60	200				1,410				990			60	2,600

Summary by days of wheat futures accounts definitely identified as belonging to Arthur W. Cutten for the years 1930 and 1931
(In thousands of bushels, i. e., "000" omitted)

Date	May				July				September				December				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1931																				
28							60	200				1,410				990			60	2,600
29							60	200				1,410				990			60	2,600
Holiday																				
Sunday																				
June 1							60	200				1,410				990			60	2,600
2							60	200				1,410				990			60	2,600
3							60	200	....	200	....	1,610	100	....	....	890	100	200	60	2,700
4							60	200	....	100	....	1,710	200	....	200	890	200	100	260	2,800
5							60	200	500	....	....	1,210	200	....	400	890	700	....	460	2,300
6							60	200				1,210	....	....	400	890	....	....	460	2,300
Sunday																				
8							60	200				1,210	....	200	400	1,090	....	200	460	2,500
9							60	200				1,210	....	....	400	1,090	....	....	460	2,500
10							60	200				1,210	....	400	400	1,490	....	400	460	2,900
11							60	200	400	....	....	810	....	....	400	1,490	400	....	460	2,500
12					200	60	—	—	640	100	....	270	200	....	400	1,290	1,040	160	400	1,560
13												270	....	....	400	1,290			400	1,560
Sunday																				
15												270	....	....	400	1,290			400	1,560
16												270	....	....	400	1,290	....	....	400	1,560
17												270	400	....	400	890	400	....	400	1,160
18									....	700	....	970	....	900	400	1,790	....	1,600	400	2,760
19									200	....	....	970	....	....	400	1,790	....	....	400	2,760
20									....	200	....	770	670	....	400	1,120	870	....	400	1,890
Sunday																				
22									....	200	....	970	....	400	400	1,520	....	600	400	2,490
23									....	400	....	1,370	....	100	400	1,620	....	500	400	2,990
24									870	....	....	500	1,420	....	400	200	2,290	....	400	700
25									....	....	....	500	....	....	400	200	....	....	400	700
26									....	....	....	500	300	....	500	....	300	....	500	500
27									....	100	....	600	200	....	700	....	200	100	700	600
Sunday																				
29									100	....	....	500	....	....	700	....	100	....	700	500
30									....	300	....	800	....	400	700	400	....	700	700	1,200

ly 1	....	400	....	1,200	....	695	600	995	....	1,095	600	2,195
2	....	....	....	1,200	....	....	600	995	....	....	600	2,195
3	180	400	....	1,420	....	100	600	1,095	180	500	600	2,515
Holiday												
Sunday												
6	....	100	....	1,520	....	200	600	1,295	....	300	600	2,815
7	....	100	....	1,620	75	....	475	1,095	75	100	475	2,715
8	....	100	....	1,720	....	200	475	1,295	....	300	475	3,015
9	100	....	....	1,620	....	300	175	1,295	100	300	175	2,915
10	400	200	....	1,420	....	200	100	1,420	400	400	100	2,840
11	220	100	....	1,300	....	200	100	1,620	220	300	100	2,920
Sunday												
13	400	....	....	900	....	400	100	2,020	400	400	100	2,920
14	300	100	....	700	495	200	100	1,725	795	300	100	2,425
15	....	55	....	755	....	....	100	1,725	....	55	100	2,480
16	855	....	100	....	1,425	....	200	400	2,280	....	300	400
17	....	....	100	....	....	....	200	400	....	....	300	400
18	85	....	185	....	100	....	300	400	185	....	485	400
Sunday												
20	....	....	185	....	....	....	300	400	....	....	485	400
21	....	665	....	480	....	500	200	800	....	1,165	200	1,280
22	....	350	....	830	....	600	200	1,400	....	950	200	2,230
23	....	....	....	830	....	....	200	1,400	....	....	200	2,230
24	200	200	....	830	285	100	200	1,215	485	300	200	2,045
25				830	....	....	200	1,215	....	....	200	2,045
Sunday												
27				830	....	200	200	1,415	....	200	200	2,245
28				830	....	900	....	2,115	....	900	....	2,945
29				830	....	200	....	2,315	....	200	....	3,145
30				830	....	....	....	2,315	....	....	....	3,145
31				830	....	100	....	2,415	....	100	....	3,245
Aug. 1	230	....	....	600	200	....	....	2,215	430	....	....	2,815
Sunday												
3	....	....	....	600	810	....	110	1,515	810	....	110	2,115
4	....	....	....	600	....	200	25	1,630	....	200	25	2,230
5	500	....	....	100	200	1,100	....	2,505	700	1,100	....	2,605
6	300	300	....	100	200	....	....	2,305	500	300	....	2,405
7	200	300	....	200	1,020	400	....	1,685	1,220	700	....	1,885
8				200	....	400	....	2,085	....	400	....	2,285
Sunday												

Summary by days of wheat futures accounts definitely identified as belonging to Arthur W. Cutten for the years 1930 and 1931 (In thousands of bushels, i. e., "000" omitted)

Date	May				July				September				December				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1931																				
10													200	835	425	200	1,875	835	425	200	2,075
11		70		70									200	200	420	200	2,095	200	490	200	2,365
12				70									200	....	155	200	2,250	....	155	200	2,520
13				70									200	460	....	400	1,990	460	....	400	2,260
14				70					200	....	....	....	....	....	400	....	1,990	200	400	....	2,060
15				70										500	50	420	1,960	500	50	420	2,030
Sunday																					
17				70										500	....	670	1,710	500	....	670	1,780
18				70										720	....	815	1,135	720	....	815	1,205
19				70										....	....	815	1,135	....	....	815	1,205
20				70										....	300	815	1,435	....	300	815	1,505
21				70										900	....	1,215	935	900	....	1,215	1,005
22				70												1,215	935	....	....	1,215	1,005
Sunday																					
24				70										....	1,045	470	1,235	....	1,045	470	1,305
25		200		270										....	400	450	1,615	....	600	450	1,885
26				270												450	1,615	....	....	450	1,885
27				270												450	1,615	....	....	450	1,885
28				270												450	1,615	....	....	450	1,885
29				270											400	50	1,615	....	400	50	1,885
Sunday																					
31		500		770											400	....	1,965	....	900	....	2,735
Sept. 1				770													1,965	....	....	....	2,735
2				770													1,965	....	....	....	2,735
3		100		870													1,965	....	100	....	2,835
4				870													1,965	....	....	....	2,835
Holiday																					
Sunday																					
Holiday																	1,965	....	100	....	2,935
8		100		970										....	185	....	2,150	....	185	....	3,120
9				970										....	....	....	2,150	....	....	....	3,120
10				970										300	300	....	2,150	300	300	....	3,120
11				970																	

12				970				100		100	2,150	100		100	3,120	
Sunday																
14				970				300		100	1,850	300		100	2,820	
15				970				635		110	1,225	635		110	2,195	
16				970						110	1,225			110	2,195	
17				970						110	1,225			110	2,195	
18				970					100	10	1,225		100	10	2,195	
19				970						10	1,225			10	2,195	
Sunday																
21				970						10	1,225			10	2,195	
22				970						10	1,225			10	2,195	
23	75		5	900			600			10	1,825	75	600	15	2,725	
24			5	900		10				10	1,815	10		15	2,715	
25			5	900		315				10	1,500	315		15	2,400	
26	100		5	800		285				10	1,215	385		15	2,015	
Sunday																
28	200		5	600						10	1,215	200		15	1,815	
29			5	600		500				110	815	500		115	1,415	
30		200	5	800						110	815		200	115	1,615	
644																
Oct. 1			5	800						110	815			115	1,615	
2			5	800						110	815			115	1,615	
3		400	5	1,200			110			100	915		510	105	2,115	
Sunday																
5			5	1,200						100	915			105	2,115	
6	200		5	1,000		100	600				1,315	300	600	5	2,315	
7			5	1,000		120	200				1,395	120	200	5	2,395	
8	600		5	400		1,160	300				535	1,760	300	5	935	
9	400	200	205	400		100					435	500	200	205	835	
10	1,100	375	800	270			110				545	1,100	485	800	815	
Sunday																
Holiday																
13	200		1,000	270							545	200		1,000	815	
14	100		1,100	270							545	100		1,100	815	
15	100		1,200	270							545	100		1,200	815	
16	5		1,205	270							545	5		1,205	815	
17	260	190	1,275	270							545	260	190	1,275	815	
Sunday																
19	200	200	1,275	270							545	200	200	1,275	815	
20			1,275	270							545			1,275	815	
21	100		1,375	270							545	100		1,375	815	
22	90		1,465	270							545	90		1,465	815	

Summary by days of wheat futures accounts definitely identified as belonging to Arthur W. Cutten for the years 1930 and 1931
(In thousands of bushels, i. e., "000" omitted)

Date	May				July				September				December				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1931																				
23	....	....	1,465	270												545	....	....	1,465	815
24	1,100	400	2,165	270												545	1,100	400	2,165	815
Sunday																				
26	....	....	2,165	270												545	....	....	2,165	815
27	....	300	1,865	270												545	....	300	1,865	815
28	300	....	2,165	270												545	300	....	2,165	815
29	75	....	2,240	270												545	75	....	2,240	815
30	500	400	2,340	270												545	500	400	2,340	815
31	500	....	2,840	270												545	500	....	2,840	815
Nov.																				
Sunday																				
2	....	....	2,840	270												545	....	....	2,840	815
3	195	....	3,035	270												545	195	....	3,035	815
4	800	700	3,135	270												545	800	700	3,135	815
5	600	100	3,635	270												545	700	100	3,635	715
6	....	....	3,635	270									100	....	....	445	....	....	3,635	715
7	....	....	3,635	270												445	....	....	3,635	715
Sunday																				
9	....	....	3,635	270												445	....	....	3,635	715
10	....	....	3,635	270												445	....	....	3,635	715
Holiday																				
12	....	....	3,635	270												445	....	....	3,635	715
13	....	1,500	2,135	270												445	....	1,500	2,135	715
14	....	1,285	850	270												445	....	1,285	850	715
Sunday																				
16	....	....	850	270												445	....	....	850	715
17	300	300	850	270												445	....	300	850	715
18	....	....	850	270	200	....	200	....								445	200	....	1,050	715
19	200	....	1,050	270	....	130	70	....								445	200	130	1,120	715
20	....	1,305	345	870	....	70	....	....								445	....	1,375	345	1,315
21	....	500	95	1,120												445	....	500	95	1,565
Sunday																				
23	80	480	95	1,520												445	80	480	95	1,965

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WHEAT FUTURES ACCOUNTS OPERATED AND CONTROLLED BY ARTHUR W. CUTTEN CARRIED UNDER THE NAMES OF RELATIVES AND ASSOCIATES.

1930-1931.

Summary by days of wheat futures accounts operated and controlled by Arthur W. Cutten but carried under the names of relatives and associates.

(In thousands of bushels, i. e., "000" omitted)

Date	May				July				September				December				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1930																				
Jan. 13	....	200	....	200													....	200	....	200
14	....	....	....	200													....	....	....	200
15	....	....	....	200													....	....	....	200
16	....	200	....	400													....	200	....	400
17	....	....	....	400													....	....	....	400
18	....	....	....	400													....	....	....	400
Sunday																				
20	....	100	....	500													....	100	....	500
21	....	....	....	500													....	....	....	500
22	....	....	....	500													....	....	....	500
23	....	....	....	500													....	....	....	500
24	....	....	....	500													....	....	....	500
25	....	....	....	500													....	....	....	500
Sunday																				
27	....	....	....	500	....	200	....	200									....	200	....	700
28	....	....	....	500	....	....	....	200									....	....	....	700
29	200	....	....	300	....	....	....	200									200	....	....	500
30	....	....	....	300	....	....	....	200									....	....	....	500
31	....	....	....	300	....	200	....	400									....	200	....	700
Feb. 1	....	....	....	300	....	....	....	400									....	....	....	700
Sunday																				
3	....	200	....	500	....	200	....	600									....	400	....	1,100
4	....	....	....	500	....	205	....	805									....	205	....	1,305
5	....	....	....	500	....	....	....	805									....	....	....	1,305
6	300	....	....	200	....	....	....	805									300	....	....	1,005
7	200	....	....	....	....	....	....	805									200	....	....	805
8	....	....	....	....	....	....	....	805									....	....	....	805
Sunday																				
10	....	....	....	....	....	....	....	805									....	....	....	805
11	....	....	....	....	100	....	....	705									100	....	....	705
Holiday																				
13	....	....	....	....	200	....	....	505									200	....	....	505

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14					505										505
15			200		705								200		705
Sunday															
17					705										705
18					705										705
19					705										705
20					705										705
21					705										705
Holiday															
Sunday															
24					705										705
25					705										705
26		705									705				
27															
28															
Mar. 1															
Sunday															
3															
4															
5															
6			600		600								600		600
7					600										600
8					600										600
Sunday															
10			200		800		400		400				600		1,200
11					800				400						1,200
12					800		100		500				100		1,300
13			200		1,000				500				200		1,500
14					1,000				500						1,500
15					1,000				500						1,500
Sunday															
17					1,000				500						1,500
18					1,000				500						1,500
19					1,000				500						1,500
20					1,000				500						1,500
21					1,000				500						1,500
22		100			900				500		100				1,400
Sunday															
24					900				500						1,400
25					900				500						1,400
26					900				500						1,400
27					900				500						1,400
28		100			800	200			300		300				1,100

Summary by days of wheat futures accounts operated and controlled by Arthur W. Cutten but carried under the names of relatives and associates.
(In thousands of bushels, i. e., "000" omitted)

Date	May				July				September				December				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1930																				
29					....	....	....	800	....	....	....	300					....	....	....	1,100
Sunday																				
31					....	....	....	800	....	....	....	300					....	....	....	1,100
47																				
pr. 1								800				300								1,100
2					900	....	300	200				300					900	....	300	500
3					300	....	600	200				300					300	....	600	500
4							600	200				300							600	500
5							600	200				300							600	500
Sunday																				
7							600	200				300							600	500
8							600	200				300							600	500
9							600	200				300							600	500
10							600	200				300							600	500
11							600	200				300							600	500
12						400	200	200				300						400	200	500
Sunday																				
14							200	200				300							200	500
15							200	200				300							200	500
16							200	200				300							200	500
17							200	200				300							200	500
Holiday																				
19							200	200				300							200	500
Sunday																				
21							200	200				300							200	500
22							200	200	....	200	....	500					200		200	700
23							200	200				500							200	700
24							200	200				500							200	700
25							200	200				500							200	700
26							200	200				500							200	700
Sunday																				
28					200	....	200	....	100	....	....	400					300		200	400
29							200	....				400							200	400
30							200	....				400							200	400

May	1		200				400					200	400
	2		200				400					200	400
	3		200				400					200	400
	Sunday												
	5		200				400					200	400
	6		200				400					200	400
	7		200			200	600				200	200	600
	8		200				600				200	200	600
	9		200			200	800				200	200	800
	10		200				800					200	800
	Sunday												
	12		200				800					200	800
	13		200				800					200	800
	14		200				800					200	800
	15		200				800					200	800
	16		200				800					200	800
	17		200				800					200	800
	Sunday												
	19		200				800					200	800
	20		200				800					200	800
	21		200				800					200	800
	22		200				800					200	800
	23		200				800					200	800
	24		200				800					200	800
	Sunday												
	26		200			250	1,050				250	200	1,050
	27		200				1,050					200	1,050
	28		200				1,050					200	1,050
	29		200				1,050					200	1,050
	Holiday												
	31		200				1,050					200	1,050
	Sunday												
June	2		200				1,050					200	1,050
	3		200				1,050					200	1,050
	4		200				1,050					200	1,050
	5		200				1,050					200	1,050
	6		200				1,050					200	1,050
	7		200		90		960			90		200	960
	Sunday												
	9		200				960					200	960
	10		200		125		835			125		200	835
	11		200		35		800			35		200	800

Summary by days of wheat futures accounts operated and controlled by Arthur W. Cutten but carried under the names of relatives and associates.
(In thousands of bushels, i. e., "000" omitted)

Date	May				July				September				December				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1930																			200	800
12							200	....	....	....	....	800							200	1,000
13							200	....	....	200	....	1,000							200	1,390
14							200	....	20	210	....	1,190	....	200	....	200	20	410		
Sunday																				
16							200	....	....	500	....	1,690				200	....	500	200	1,890
17							200	....	....	....	....	1,690	....	....	....	200	....	....	200	1,890
18							200	....	135	400	....	1,955	....	200	....	400	135	600	200	2,355
19							200	....	....	....	....	1,955	....	....	....	400	....	....	200	2,355
20							200	....	245	200	....	1,910	200	200	....	400	445	400	200	2,310
21							200	....	....	....	....	1,910	....	1,500	....	1,900	....	1,500	200	3,810
Sunday																				
23							200	....	10	....	....	1,900	....	....	....	1,900	10	....	200	3,800
24							200	....	....	....	....	1,900	....	200	....	2,100	....	200	200	4,000
25							200	....	....	....	....	1,900	....	....	....	2,100	....	....	200	4,000
26					200	....	....	....	1,210	....	....	690	1,000	....	....	1,100	2,210	200	....	1,790
27									200	....	....	490	300	....	....	800	500	....	....	1,290
28												490	....	....	....	800	....	....	....	1,290
Sunday																				
30												490	....	300	....	1,100	....	300	....	1,590
348																				
July 1												490	....	280	....	1,380	....	280	....	1,870
2									490	....	....	....	....	....	....	1,380	490	....	....	1,380
3									....	....	....	....	280	....	....	1,100	280	....	....	1,100
Holiday																				
Holiday																				
Sunday																				
7													....	600	....	1,700	....	600	....	1,700
8													....	200	....	1,900	....	200	....	1,900
9													1,300	....	....	600	1,300	....	....	600
10													....	....	....	600	....	....	....	600
11													....	400	....	1,000	....	400	....	1,000
12													....	....	....	1,000	....	....	....	1,000
Sunday																				

14	600	....	....	400	600	....	....	400						
15	....	....	....	400	....	....	....	400						
16	400	....	....	....	400	....	....	....						
17	400	....	400	....	400	....	400	....						
18	....	....	400	....	....	....	400	....						
19	....	....	400	....	....	....	400	....						
Sunday														
21	....	....	400	....	....	....	400	....						
22	....	....	400	....	....	....	400	....						
23	....	....	400	....	....	....	400	....						
24	....	....	400	....	....	....	400	....						
25	....	....	400	....	....	....	400	....						
26	....	....	400	....	....	....	400	....						
Sunday														
28	....	400	....	....	....	400	....	....						
29														
30														
31														
Aug. 1														
2														
Sunday														
4	200	....	200	....	200	....	200	....						
5	....	....	200	....	....	....	200	....						
6	200	....	400	....	200	....	400	....						
7	....	....	400	....	....	....	400	....						
8	....	....	400	....	....	....	400	....						
9	....	....	400	....	....	....	400	....						
Sunday														
11	....	700	....	300	....	700	....	300						
12	....	200	....	500	....	200	....	500						
13	....	100	....	600	....	100	....	600						
14	....	....	....	600	....	....	....	600						
15	600	....	....	....	600	....	....	....						
16	....	....	....	....	....	....	....	....						
Sunday														
18	....	300	....	300	....	300	....	300						
19	....	....	....	300	....	....	....	300						
20	....	....	....	300	....	....	....	300						
21	....	....	....	300	....	....	....	300						
22	....	....	....	300	....	....	....	300						
23	....	....	....	300	....	....	....	300						
Sunday														

Summary by days of wheat futures accounts operated and controlled by Arthur W. Cutten but carried under the names of relatives and associates.
(In thousands of bushels, i. e., "000" omitted)

Date	May				July				September				December				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1930																				
25													....	....	....	300	....	....	....	300
26													400	....	100	....	400	....	100	....
27													....	....	100	....	....	....	100	....
28													....	....	100	....	....	....	100	....
29													....	....	100	....	....	....	100	....
Holiday																				
Sunday																				
Holiday																				
Sep. 2													....	490	100	490	....	490	100	490
3													....	....	100	490	....	....	100	490
4													....	....	100	490	....	....	100	490
5													....	....	100	490	....	....	100	490
6													....	....	100	490	....	....	100	490
Sunday																				
8													....	....	100	490	....	....	100	490
9													....	....	100	490	....	....	100	490
10													....	....	100	490	....	....	100	490
11													....	....	100	490	....	....	100	490
12													....	....	100	490	....	....	100	490
13													....	....	100	490	....	....	100	490
Sunday																				
15													....	400	100	890	....	400	100	890
16													890	....	100	....	890	....	100	....
17													....	....	100	....	....	....	100	....
18													....	....	100	....	....	....	100	....
19													....	....	100	....	....	....	100	....
20													....	....	100	....	....	....	100	....
Sunday																				
22													....	....	100	....	....	....	100	....
23													....	....	100	....	....	....	100	....
24													....	100	....	....	....	100	....	....
25													....	....	....	....	....	....	....	....
26													....	....	....	....	....	....	....	....

	27		200		200									200		200
Sunday																
	29				200											
	30				200											200
																200
9																
ct.	1	200											200			
	2															
	3															
	4															
Sunday																
	6															
	7															
	8															
	9															
	10															
	11															
Sunday																
Holiday																
	14															
	15															
	16															
	17															
	18															
Sunday																
	20															
	21															
	22															
	23															
	24															
	25		200		200							300		300		500		500
Sunday																
	27				200									300				500
	28				200									300				500
	29				200									300				500
	30				200									300				500
	31				200									300				500
ov.	1				200							200		500		200		700
Sunday																		
	3				200							150		650		150		850
Holiday																		
	5				200									650				850

Summary by days of wheat futures accounts operated and controlled by Arthur W. Cutten but carried under the names of relatives and associates.
(In thousands of bushels, i. e., "000" omitted)

Date	May				July				September				December				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1930																				
6				200												650				850
7				200									200			450	200			650
8				200												450				650
Sunday																				
10				200												450				650
Holiday																				
12				200									150			300	150			500
13				200									300				300			200
14		200		400														200		400
15				400																400
Sunday																				
17				400																400
18				400																400
19	400																400			
20																				
21																				
22																				
Sunday																				
24																				
25																				
26																				
Holiday																				
28																				
29																				
Sunday																				
Dec. 1																				
2																				
3																				
4																				
5																				
6																				
Sunday																				
8																				

9													
10													
11			10		10					10		10	
12					10							10	
13			200		210					200		210	
Sunday													
15					210							210	
16					210							210	
17			200		410					200		410	
18					410							410	
19					410							410	
20					410							410	
Sunday													
22			85		495					85		495	
23					495							495	
24					495							495	
Holiday													
26					495							495	
27					495							495	
Sunday													
29					495							495	
30					495							495	
31					495							495	
650													
1931													
Holiday													
Jan. 2			200		695					200		695	
3					695							695	
Sunday													
5		200			495				200			495	
6					495							495	
7					495							495	
8					495							495	
9					495							495	
10					495							495	
Sunday													
12					495							495	
13					495							495	
14		305			190				305			190	
15					190							190	
16			205		395					205		395	
17					395							395	

Summary by days of wheat futures accounts operated and controlled by Arthur W. Cutten but carried under the names of relatives and associates.
(In thousands of bushels, i. e., "000" omitted)

Date	May				July				September				December				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1931																				
Sunday																				
19								395												395
20								395												395
21								395												395
22								395												395
23								395												395
24								395												395
Sunday																				
26								395												395
27								395												395
28								395												395
29								395												395
30								395												395
31								395												395
Sunday																				
2						200		595										200		595
3								595												595
4								595												595
5					180			415									180			415
6								415												415
7								415												415
Sunday																				
9								415												415
10					85			330									85			330
11								330												330
Holiday																				
13								330												330
14								330												330
Sunday																				
16								330												330
17								330												330
18								330												330
19								330												330

20			330				330
21			330				330
Sunday							
Holiday							
24			330				330
25			330				330
26			330				330
27			330				330
28			330				330
Sunday							
Mar. 2			330				330
3		45	375		45		375
4			375				375
5			375				375
6			375				375
7			375				375
Sunday							
9			375				375
10			375				375
11			375				375
12			375				375
13			375				375
14			375				375
Sunday							
16			375				375
17			375				375
18			375				375
19			375				375
20			375				375
21			375				375
Sunday							
23			375				375
24			375				375
25			375				375
26			375				375
27			375				375
28			375				375
Sunday							
30		100	475		100		475
31			475				475

Summary by days of wheat futures accounts operated and controlled by Arthur W. Cutten but carried under the names of relatives and associates.
(In thousands of bushels, i. e., "000" omitted)

Date	May				July				September				December				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1931																				
Apr. 1								475												475
2								475												475
Holiday																				
4								475												475
Sunday																				
6								475												475
7								475												475
8								475												475
9								475												475
10								475												475
11								475												475
Sunday																				
13								475												475
14								475												475
15								475												475
16								475												475
17								475												475
18								475												475
Sunday																				
20								475												475
21								475												475
22								475												475
23								475												475
24								475												475
25								475		100		100						100		575
Sunday																				
27					165			310		200		300					165	200		610
28								310				300								610
29								310				300								610
30								310	300								300			310
May 1								310												310
2								310												310
Sunday																				

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Summary by days of wheat futures accounts operated and controlled by Arthur W. Cutten but carried under the names of relatives and associates.
(In thousands of bushels, i. e., "000" omitted)

Date	May				July				September				December				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1931																				
15																				
16																				
17																				
18																				
19																				
20																				
Sunday																				
22																				
23																				
24																				
25																				
26																				
27																				
Sunday																				
29																				
30																				
652																				
July 1														105		105		105		105
2																105				105
3														100		205		100		205
Holiday																				
Sunday																				
6																205				205
7																205				205
8																205				205
9																205				205
10																205				205
11																205				205
Sunday																				
13																205				205
14													205				205			
15																				

| | | |

Summary by days of wheat futures accounts operated and controlled by Arthur W. Cutten but carried under the names of relatives and associates.
(In thousands of bushels, i. e., "000" omitted)

Date	May				July				September				December				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1931																				
27				400																400
28				400																400
29				400																400
Sunday																				
31				400																400
Sept. 1				400																400
2				400																400
3				400																400
4				400																400
Holiday																				
Sunday																				
Holiday																				
8				400																400
9				400																400
10				400																400
11				400																400
12				400																400
Sunday																				
14				400																400
15				400																400
16				400																400
17				400																400
18				400																400
19				400																400
Sunday																				
21				400																400
22				400																400
23				400																400
24				400																400
25				400																400
26				400																400
Sunday																				
28				400																400

29				400								400
30				400								400
Oct. 1				400								400
2				400								400
3				400								400
Sunday												
5				400								400
6				400								400
7				400								400
8				400								400
9				400								400
10				400								400
Sunday												
Holiday												
13				400								400
14				400								400
15				400								400
16				400								400
17				400								400
Sunday												
19				400								400
20				400								400
21				400								400
22				400								400
23				400								400
24				400								400
Sunday												
26				400								400
27				400								400
28				400								400
29	25	....	25	400					25	....	25	400
30	100	....	125	400					100	....	125	400
31	200	....	325	400					200	....	325	400
Sunday												
Nov. 2	....	....	325	400					....	....	325	400
3	....	....	325	400					....	....	325	400
4	....	....	325	400					....	....	325	400
5	....	....	325	400					....	....	325	400
6	....	....	325	400					....	....	325	400
7	....	....	325	400					....	....	325	400

Summary by days of wheat futures accounts operated and controlled by Arthur W. Cutten but carried under the names of relatives and associates.
(In thousands of bushels, i. e., "000" omitted)

Date	May				July				September				December				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1931																				
Sunday																				
9	....	....	325	400													....	....	325	400
10	....	....	325	400													....	....	325	400
Holiday																				
12	....	....	325	400													....	....	325	400
13	....	....	325	400													....	....	325	400
14	....	15	310	400													....	15	310	400
Sunday																				
16	....	....	310	400													....	....	310	400
17	....	200	110	400													....	200	110	400
18	....	....	110	400													....	....	110	400
19	....	....	110	400													....	....	110	400
20	....	110	....	400													....	110	....	400
21	....	....	....	400													....	....	....	400
Sunday																				
23	....	....	....	400													....	....	....	400
24	....	200	....	600													....	200	....	600
25	....	105	....	705													....	105	....	705
Holiday																				
27	....	....	....	705													....	....	....	705
28	....	....	....	705													....	....	....	705
Sunday																				
30	25	....	....	680													25	....	....	680
Dec. 1	100	....	....	580													100	....	....	580
2	....	....	....	580													....	....	....	580
3	210	....	....	370													210	....	....	370
4	65	....	....	305													65	....	....	305
5	....	....	....	305													....	....	....	305
Sunday																				
7	....	....	....	305													....	....	....	305
8	....	....	....	305													....	....	....	305
9	....	....	....	305													....	....	....	305
10	....	100	....	405													....	100	....	405

11			405									405
12			405									405
Sunday												
14			405									405
15			405									405
16			405									405
17			405									405
18			405									405
19			405									405
Sunday												
21			405									405
22			405									405
23			405									405
24			405									405
Holiday												
Holiday												
Sunday												
28			405									405
29			405									405
30			405									405
31			405									405
1930 Total	1,300	1,300		2,605	3,100	2,860	2,860	7,420	7,420	14,185	14,680	
1931 Total	725	1,130		1,245	750	505	505	205	205	2,680	2,590	
Grand Total	2,025	2,430		3,850	3,850	3,365	3,365	7,625	7,625	16,865	17,270	

ARTHUR W. CUTTEN—COMBINED ACCOUNTS
1930-1931.

655 Summary by days of wheat futures accounts definitely identified as belonging to Arthur W. Cutten combined with those operated and controlled by Cutten but carried under the names of relatives and associates.
1930–1931.
(In thousands of bushels, i. e., "000" omitted)

Date	May				July				September				December				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1930																				
Holiday																				
Jan. 2																				
3																				
4																				
Sunday																				
6																				
7																				
8																				
9																				
10	....	400	....	400													....	400	....	400
11	....	....	....	400													....	....	....	400
Sunday																				
13	....	200	....	600													....	200	....	500
14	....	....	....	600													....	....	....	600
15	300	100	....	400													300	100	....	400
16	....	800	....	1,200													....	800	....	1,200
17	....	100	....	1,300													....	100	....	1,300
18	....	....	....	1,300													....	....	....	1,300
Sunday																				
20	....	100	....	1,400													....	100	....	1,400
21	....	....	....	1,400													....	....	....	1,400
22	....	....	....	1,400													....	....	....	1,400
23	....	....	....	1,400													....	....	....	1,400
24	350	....	....	1,050													350	....	....	1,050
25	....	....	....	1,050													....	....	....	1,050
Sunday																				
27	140	....	....	910	....	400	....	400									140	400	....	1,310
28	....	....	....	910	....	....	....	400									....	....	....	1,310
29	200	200	....	910	....	200	....	600									200	400	....	1,510
30	....	....	....	910	....	....	....	600									....	....	....	1,510
31	....	....	....	910	....	200	....	800									....	200	....	1,710
Feb. 1 Sunday	....	....	....	910	....	155	....	955									....	155	....	1,865

400 Complainant's Exhibit 411.

3	300	400	....	1,010	155	400	.....	1,200									455	800	.....	2,210
4	....	....	....	1,010	....	1,400	....	2,600									....	1,400	....	3,610
5	....	200	....	1,210	....	....	....	2,600									....	200	....	3,810
6	600	....	....	610	....	560	....	3,160									600	560	....	3,770
7	710	....	100	....	....	....	....	3,160									710	....	100	3,160
8	....	....	100	....	....	....	....	3,160									....	....	100	3,160
Sunday																				
10	....	....	100	....	....	....	....	3,160									....	....	100	3,160
11	....	....	100	....	100	....	....	3,060									100	....	100	3,060
Holiday																				
13	200	....	300	....	200	....	....	2,860									400	....	300	2,860
14	500	500	300	....	795	500	....	2,565									1,295	1,000	300	2,565
15	....	100	200	....	....	200	....	2,765									....	300	200	2,765
Sunday																				
17	300	100	400	....	....	....	....	2,765	....	200	....	200					300	300	400	2,965
18	....	200	200	....	....	....	....	2,765				200					....	200	200	2,965
19	200	400	....	....	....	100	....	2,865				200					200	500	....	3,065
20	....	75	....	75	....	....	....	2,865				200					....	75	....	3,140
21	....	....	....	75	....	....	....	2,865				200					....	....	....	3,140
Holiday																				
Sunday																				
24	305	730	....	500	300	....	....	2,565	....	100	....	300					605	830	....	3,365
25	....	395	....	895	....	....	....	2,565				300					....	395	....	3,760
26	895	....	....	....	2,565	....	....	....				300					3,460	....	....	300
27					....	400	....	400				300					....	400	....	700
28					400	....	....					300					400	....	....	300
Mar. 1												300								300
Sunday																				
3												300								300
4												300								300
5												300								300
6						600	....	600				300						600	....	900
7								600				300								900
8								600				300								900
Sunday																				
10					....	200	....	800	....	400	....	700					....	600	.....	1,500
11					....	300	....	1,100				700					....	300	....	1,800
12					....	600	....	1,700	....	300	....	1,000					....	900	....	2,700
13								1,700				1,000								2,700
14								1,700				1,000								2,700
15								1,700				1,000								2,700
Sunday																				

Summary by days of wheat futures accounts definitely identified as belonging to Arthur W. Cutten combined with those operated and controlled by Cutten but carried under the names of relatives and associates.
1930–1931.
(In thousands of bushels, i. e., "000" omitted)

Date	May				July				September				December				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1930																				
17								1,700				1,000								2,700
18								1,700				1,000								2,700
19								1,700				1,000								2,700
20								1,700				1,000								2,700
21								1,700				1,000								2,700
22					700	300	....	1,300				1,000					700	300	....	2,300
Sunday																				
24					....	400	....	1,700				1,000					....	400	....	2,700
25					400	....	....	1,300				1,000					400	....	....	2,300
26					....	....	....	1,300				1,000					....	....	....	2,300
27					....	....	....	1,300				1,000					....	....	....	2,300
28					100	....	....	1,200	200	....	....	800					300	....	....	2,000
29					....	....	....	1,200				800					....	....	....	2,000
Sunday																				
31								1,200				800								2,000
656																				
April 1								1,200				800								2,000
2					1,500	....	500	200				800					1,500	....	500	1,000
3					700	....	1,200	200				800					700	....	1,200	1,000
4					1,000	....	2,200	200				800					1,000	....	2,200	1,000
5					....	....	2,200	200				800							2,200	1,000
Sunday																				
7							2,200	200				800							2,200	1,000
8							2,200	200				800							2,200	1,000
9					600	....	2,800	200				800					600	....	2,800	1,000
10							2,800	200				800							2,800	1,000
11							2,800	200				800							2,800	1,000
12					....	1,400	1,400	200				800						1,400	1,400	1,000
Sunday																				
14							1,400	200				800							1,400	1,000
15							1,400	200				800							1,400	1,000
16						1,500	700	1,000				800						1,500	700	1,800
							700	1,000				800							700	1,800

Holiday															
19		1,090	120	1,280	610			800		1,090	120	1,280	1,410		
Sunday															
21			80	1,200	610			800			80	1,200	1,410		
22			200	1,000	610		500	1,300			700	1,000	1,910		
23			500	500	610			1,300			500	500	1,910		
24				500	610	400	400	1,300		400	400	500	1,910		
25				500	610			1,300				500	1,910		
26				500	610			1,300				500	1,910		
Sunday															
28		1,110	1,200	400	600	700	400	1,000		1,810	1,600	400	1,600		
29		350		400	250	290		710		640		400	960		
30		550		700		110		600		660		700	600		
May 1				700				600				700	600		
2				700				600				700	600		
3		250	250	700		250	250	600		500	500	700	600		
Sunday															
5				700				600				700	600		
6			850	300	450		250	850			1,100	300	1,300		
7		1,050		900		250	1,000	1,600		1,300	1,000	900	1,600		
8				900			200	1,800			200	900	1,800		
9				900			600	2,400			600	900	2,400		
10				900			75	2,475			75	900	2,475		
Sunday															
12			210	800	110			2,475			210	800	2,585		
13				800	110			2,475				800	2,585		
14				800	110			2,475				800	2,585		
15			1,050	200	560		220	2,695			1,270	200	3,255		
16				200	560			2,695				200	3,255		
17				200	560			2,695				200	3,255		
Sunday															
19				200	560			2,695				200	3,255		
20		200		200	360	50		2,645		250		200	3,005		
21				200	360			2,645				200	3,005		
22			450	200	810		250	2,895			700	200	3,705		
23				200	810			2,895				200	3,705		
24				200	810			2,895				200	3,705		
Sunday															
26				200	810		450	3,345			450	200	4,155		
27				200	810			3,345				200	4,155		
28				200	810			3,345				200	4,155		
29				200	810			3,345				200	4,155		

Summary by days of wheat futures accounts definitely identified as belonging to Arthur W. Cutten combined with those operated and controlled by Cutten but carried under the names of relatives and associates.
1930–1931.
(In thousands of bushels, i. e., "000" omitted)

Date	May				July				September				December				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1930																				
Holiday																				
31							200	810				3,345							200	4,155
Sunday																				
June 2					200	....	200	610	200	....	....	3,145					400	....	200	3,755
3							200	610				3,145							200	3,755
4							200	610				3,145							200	3,755
5							200	610				3,145							200	3,755
6							200	610				3,145							200	3,755
7							200	610	90	....	....	3,055					90	....	200	3,665
Sunday																				
9							200	610				3,055							300	3,665
10							200	610	125	....	....	2,930					125	....	200	3,540
11					110	....	200	500	285	....	....	2,645					395	....	200	3,145
12					300	....	200	200	170	....	....	2,475					470	....	200	2,675
13							200	200	200	600	....	2,875	....	200	....	200	200	800	200	3,275
14							200	200	420	600		3,055	....	600	....	800	420	1,200	200	4,055
Sunday																				
16							200	200	....	700	....	3,755	....	200	....	1,000	....	900	200	4,955
17							200	200	....	....	....	3,755	....	....	....	1,000	....	....	200	4,955
18					....	200	200	400	435	400	....	3,720	50	400	....	1,350	485	1,000	200	5,470
19							200	400	....	....	....	3,720	....	....	....	1,350	....	....	200	5,470
20							200	400	345	200	....	3,575	300	200	....	1,250	645	400	200	5,225
21							200	400	....	100	....	3,675	....	2,000	....	3,250	....	2,100	200	7,325
Sunday																				
23							200	400	10	10	....	3,675	....	200	....	3,450	10	210	200	7,525
24							200	400	....	....	....	3,675	....	200	....	3,650	....	200	200	7,725
25							200	400	....	....	....	3,675	....	....	....	3,650	....	....	200	7,725
26					200	200	....	200	2,200	....	....	1,475	1,200	....	....	2,450	3,600	200	....	4,125
27								200	200	....	....	1,275	300	....	....	2,150	500	....	....	3,625
28								200	....	....	....	1,275	....	....	....	2,150	....	....	....	3,625
Sunday																				
30								200	....	....	....	1,275	....	700	....	2,850	....	700	....	4,325

7																		
July	1					200	200	200		1,275		280		3,130	200	480		4,695
	2		200				700			575				3,130	900			3,705
	3									575	400			2,730	400			3,305
Holiday																		
Holiday																		
Sunday																		
	7							200		775		800		3,530		1,000		4,305
	8									775		200		3,730		200		4,505
	9						500			275	2,140			1,590	2,640			1,865
	10									275	160			1,430	160			1,705
	11							25		300		800		2,230		825		2,530
	12									300				2,230				2,530
Sunday																		
	14							95		395	600			1,630	600	95		2,025
	15									395	200			1,430	200			1,825
	16									395	1,000			430	1,000			825
	17									395	1,930		1,600	100	1,930		1,600	495
	18									395		300	1,300	100		300	1,300	495
	19									395	700		2,000	100	700		2,000	495
Sunday																		
	21									395		950	1,050	100		950	1,050	495
	22									395			1,050	100			1,050	495
	23									395			1,050	100			1,050	495
	24									395			1,050	100			1,050	495
	25						395				100		1,050		495		1,050	
	26												1,050				1,050	
Sunday																		
	28											1,050				1,050		
	29										1,100	1,100	200	200	1,100	1,100	200	200
	30										400	1,000		600	400	1,000		600
	31													600				600
Aug.	1													600				600
	2													600				600
Sunday																		
	4										1,800		1,200		1,800		1,200	
	5										200		1,400		200		1,400	
	6										2,400	400	3,400		2,400	400	3,400	
	7										100		3,500		100		3,500	
	8										600		4,100		600		4,100	
	9											1,400	2,700			1,400	2,700	
Sunday																		

Summary by days of wheat futures accounts definitely identified as belonging to Arthur W. Cutten combined with those operated and controlled by Cutten but carried under the names of relatives and associates.
1930-1931.
(In thousands of bushels, i. e., "000" omitted)

Date	May				July				September				December				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1930																				
11													....	2,000	1,000	300	....	2,000	1,000	300
12													....	600	800	700	....	600	800	700
13													....	1,100	400	1,400	....	1,100	400	1,400
14													....	....	400	1,400	....	....	400	1,400
15													2,200	....	1,200	....	2,200	....	1,200	....
16													....	....	1,200	....	....	....	1,200	....
Sunday																				
18													....	500	1,000	300	....	500	1,000	300
19													....	....	1,000	300	....	....	1,000	300
20													200	....	1,200	300	200	....	1,200	300
21													....	....	1,200	300	....	....	1,200	300
22													....	....	1,200	300	....	....	1,200	300
23													300	....	1,500	300	300	....	1,500	300
Sunday																				
25	200	....	200	....									200	....	1,700	300	400	....	1,900	300
26	....	....	200	....									600	....	2,000	....	600	....	2,200	....
27	....	....	200	....									175	....	2,175	....	175	....	2,375	....
28	....	....	200	....									....	175	2,000	....	....	175	2,200	....
29	....	....	200	....									....	....	2,000	....	....	....	2,200	....
Holiday																				
Sunday																				
Holiday																				
							March													
Sept. 2	....	....	200	....	....	200	....	200					....	940	1,600	540	....	1,140	1,800	740
3	....	....	200	....				200					....	....	1,600	540	....	....	1,800	740
4	....	....	200	....				200					....	600	1,400	940	....	600	1,600	1,140
5	....	....	200	....				200					....	200	1,400	1,140	....	200	1,600	1,340
6	....	....	200	....				200					....	....	1,400	1,140	....	....	1,600	1,340
Sunday																				
8	....	....	200	....				200					....	400	1,000	1,140	....	400	1,200	1,340
9	....	....	200	....				200					....	....	1,000	1,140	....	....	1,200	1,340
10	....	....	200	....				200					....	....	1,000	1,140	....	....	1,200	1,340
11	....	....	200	....				200					....	400	1,000	1,540	....	400	1,200	1,740
12	....	....	200	....				200					....	....	1,000	1,540	....	....	1,200	1,740

13	....	....	200	....	.....	200	.....	....	....	1,000	1,540	....	....	1,200	1,740
Sunday																		
15	....	....	200	....	.....	200	.....	....	800	1,000	2,340	....	800	1,200	2,540
16	....	....	200	....	.....	200	.....	1,940	200	1,000	600	1,940	200	1,200	800
17	....	....	200	....	.....	200	.....	....	....	1,000	600	....	....	1,200	800
18	....	....	200	....	.....	200	.....	400	....	1,000	200	400	....	1,200	400
19	....	....	200	....	.....	200	.....	300	....	1,300	200	300	....	1,500	400
20	....	....	200	....	.....	200	.....	....	300	1,000	200	....	300	1,200	400
Sunday																		
22	....	....	200	....	200	.....	.....	....	....	1,000	200	200	....	1,200	200
23	....	....	200	....	.....	.....	.....	....	....	1,000	200	....	....	1,200	200
24	....	800	....	600	.....	.....	.....	....	1,200	....	400	....	2,000	....	1,000
25	....	....	....	600	.....	.....	.....	....	....	....	400	....	....	....	1,000
26	....	200	....	800	.....	.....	.....	....	200	....	600	....	400	....	1,400
27	....	200	....	1,000	.....	.....	.....	....	....	....	600	....	200	....	1,600
Sunday																		
29	200	....	....	800	.....	.....	.....	400	....	....	200	600	....	....	1,000
30	200	....	....	600	.....	.....	.....	200	....	....	....	400	....	....	600
658																		
Oct. 1	600	....	....	.....	.....	.....	.....	400	400	....	....	1,000	400	....	....
2	....	....	....	.....	.....	.....	.....								
3	200	200	....	.....	.....	.....	.....								
4	.....	.....	.....	.....	.....	.....	.....	300	300	....	....	500	500	....	....
Sunday																		
6	.....	.....	.....	.....	.....	.....	.....								
7	.....	.....	.....	.....	.....	.....	.....								
8	.....	.....	.....	.....	.....	.....	.....	200	200	....	....	200	200	....	....
9	.....	.....	.....	.....	.....	.....	.....								
10	100	....	100	.....	.....	.....	.....								
11	....	....	100	.....	.....	.....	.....	....	300	....	300	100	300	100	300
Sunday								30	....	....	270	30	....	100	270
Holiday																		
14	.....	100	.....	.....	.....	.....	.....								
15	.....	100	.....	.....	.....	.....	.....	....	....	....	270	....	....	100	270
16	.....	100	.....	.....	.....	.....	.....	....	....	....	270	....	....	100	270
17	.....	100	.....	.....	.....	.....	.....	....	200	....	470	....	200	100	470
18	.....	100	.....	.....	.....	.....	.....	....	....	....	470	....	....	100	470
Sunday								....	....	....	470	....	....	100	470
20	.....	100	.....	.....	.....	.....	.....								
21	.....	100	.....	.....	.....	.....	.....	....	200	....	670	....	200	100	670
22	.....	100	.....	.....	.....	.....	.....	200	200	....	670	200	200	100	670
23	.....	100	.....	.....	.....	.....	.....	400	....	....	270	400	....	100	270
								....	300	....	570	....	300	100	570

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1930–1931.
(In thousands of bushels, i. e., "000" omitted)

Date	May				July				September				December				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1930																				
24	.....	.....	100	.....									.....	.....	.....	570	.....	.....	100	570
25	.....	400	100	400									190	800	.....	1,180	190	1,200	100	1,580
Sunday																				
27	.....	.....	100	400									.....	200	.....	1,380	.....	200	100	1,780
28	.....	.....	100	400									.....	395	.....	1,775	.....	395	100	2,175
29	.....	.....	100	400									600	400	.....	1,575	600	400	100	1,975
30	.....	.....	100	400									.....	.....	.....	1,575	.....	.....	100	1,975
31	.....	.....	100	400									200	400	.....	1,775	200	400	100	2,175
Nov. 1	.....	.....	100	400									.....	200	.....	1,975	.....	200	100	2,375
Sunday																				
3	.....	.....	100	400									200	600	.....	2,375	200	600	100	2,775
Holiday																				
5	.....	300	.....	600									700	300	.....	1,975	700	600	.....	2,575
6	.....	.....	.....	600									.....	200	.....	2,175	.....	200	.....	2,775
7	.....	.....	.....	600									300	.....	.....	1,875	300	.....	.....	2,475
8	.....	.....	.....	600									.....	.....	.....	1,875	.....	.....	.....	2,475
Sunday																				
10	.....	.....	.....	600									.....	.....	.....	1,875	.....	.....	.....	2,475
Holiday																				
12	.....	.....	.....	600									980	.....	200	1,095	980	.....	200	1,695
13	.....	.....	.....	600									1,095	.....	200	.....	1,095	.....	200	600
14	200	1,800	.....	2,200									.....	.....	200	.....	200	1,800	200	2,200
15	.....	.....	.....	2,200	.....	400	.....	400					.....	.....	200	.....	.....	400	200	2,600
Sunday																				
17	700	.....	.....	1,500	.....	.....	.....	400					.....	.....	200	.....	700	.....	200	1,900
18	200	.....	.....	1,300	.....	100	.....	500					.....	.....	200	.....	200	100	200	1,800
19	1,200	200	100	400				500					.....	200	.....	.....	1,200	400	100	900
20	600	140	300	140				500									600	140	300	640
21	340	200	300					500									340	200	300	500
22	.....	.....	300					500									.....	.....	300	500
Sunday 24	.....	500	.....					500									.....	300	.....	500

25	200	....	200	....	....	....	....	500	....	....	....	....	....	....	200	....	200	500
26	....	200	....	....	....	....	....	500	....	....	....	....	....	....	....	200	....	500
Holiday																		
28	200	....	200	....	....	....	....	500	....	....	....	....	....	....	200	....	200	500
29	....	200	....	....	....	....	....	500	....	....	....	....	....	....	....	200	....	500
Sunday																		
Dec. 1	....	....	....	....	....	....	....	500	....	....	....	....	....	....	....	....	....	500
2	....	200	....	200	....	....	....	500	....	....	....	....	....	....	....	200	....	700
3	....	....	....	200	....	....	....	500	....	....	....	....	....	....	....	....	....	700
4	....	....	....	200	....	....	....	500	....	....	....	....	....	....	....	....	....	700
5	....	....	....	200	....	....	....	500	....	....	....	....	....	....	....	....	....	700
6	....	200	....	400	....	200	....	700	....	....	....	....	....	....	....	400	....	1,100
Sunday																		
8	....	....	....	400	....	200	....	900	....	....	....	....	....	....	....	200	....	1,300
9	....	....	....	400	....	....	....	900	....	....	....	....	....	....	....	....	....	1,300
10	....	195	....	595	....	....	....	900	....	....	....	....	....	....	....	195	....	1,495
11	200	....	....	395	....	200	....	1,100	....	....	....	....	....	....	200	200	....	1,495
12	5	....	....	390	....	....	....	1,100	....	....	....	....	....	....	5	....	....	1,490
13	....	....	....	390	....	300	....	1,400	....	....	....	....	....	....	....	300	....	1,790
Sunday																		
15	200	....	....	190	....	200	....	1,600	....	....	....	....	....	....	200	200	....	1,790
16	....	....	....	190	....	100	....	1,700	....	....	....	....	....	....	....	100	....	1,890
17	....	....	....	190	....	300	....	2,000	....	....	....	....	....	....	....	300	....	2,190
18	190	....	....	....	....	200	....	2,200	....	....	....	....	....	....	190	200	....	2,200
19	....	....	....	....	....	....	....	2,200	....	....	....	....	....	....	....	....	....	2,200
20	....	....	....	....	100	100	....	2,200	....	....	....	....	....	....	100	100	....	2,200
Sunday																		
22	....	....	....	....	....	190	....	2,390	....	....	....	....	....	....	....	190	....	2,390
23	....	....	....	....	....	....	....	2,390	....	....	....	....	....	....	....	....	....	2,390
24	....	....	....	....	....	....	....	2,390	....	....	....	....	....	....	....	....	....	2,390
Holiday																		
26	....	....	....	....	....	435	....	2,825	....	....	....	....	....	....	....	435	....	2,825
27	....	....	....	....	....	....	....	2,825	....	....	....	....	....	....	....	....	....	2,825
Sunday																		
29	....	....	....	....	260	500	....	3,065	....	....	....	....	....	....	260	500	....	3,065
30	....	....	....	....	....	....	....	3,065	....	....	....	....	....	....	....	....	....	3,065
31	....	....	....	....	....	....	....	3,065	....	....	....	....	....	....	....	....	....	3,065
1930 Total	10,735	10,735			15,485	18,550			8,725	8,725			28,390	28,390			63,535	66,600
					March													
					200	200												

Summary by days of wheat futures accounts definitely identified as belonging to Arthur W. Cutten combined with those operated and controlled by Cutten but carried under the names of relatives and associates.
1930–1931.
(In thousands of bushels, i. e., "000" omitted)

Date	May				July				September				December				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1931																				
Holiday																				
Jan. 2					630	300	....	2,735									630	300	....	2,735
3								2,735												2,735
Sunday																				
5					700	....	70	2,105									700	....	70	2,105
6					....	460	....	2,495									....	460	....	2,495
7					380	....	....	2,115									380	....	....	2,115
8					50	....	50	2,115									50	....	50	2,115
9							50	2,115											50	2,115
10							50	2,115											50	2,115
Sunday																				
12						235	....	2,300										235	....	2,300
13								2,300												2,300
14					1,000	....	....	1,300									1,000	....	....	1,300
15					....	400	....	1,700									....	400	....	1,700
16					....	1,000	....	2,700									....	1,000	....	2,700
17					75	200	....	2,825									75	200	....	2,825
Sunday																				
19					....	420	....	3,245									....	420	....	3,245
20					170	100	....	3,175									170	100	....	3,175
21					....	....	....	3,175									....	....	....	3,175
22					....	....	....	3,175									....	....	....	3,175
23					100	100	....	3,175									100	100	....	3,175
24					....	100	....	3,275									....	100	....	3,275
Sunday																				
26						300	....	3,575										300	....	3,575
27								3,575												3,575
28								3,575												3,575
29								3,575												3,575
30								3,575												3,575
31					100	....	....	3,475									100	....	....	3,475
Sunday																				

| | | |

Summary by days of wheat futures accounts definitely identified as belonging to Arthur W. Cutten combined with those operated and controlled by Cutten but carried under the names of relatives and associates.
1930–1931.
(In thousands of bushels, i e., "000" omitted)

Date	May				July				September				December				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1931																				
16								2,700				1,670								4,370
17								2,700				1,670								4,370
18						100		2,800				1,670						100		4,470
19								2,800		100		1,770						100		4,570
20						100		2,900		200		1,970						300		4,870
21								2,900				1,970								4,870
Sunday																				
23								2,900		100		2,070						100		4,970
24						100		3,000				2,070						100		5,070
25						100		3,100				2,070						100		5,170
26								3,100				2,070								5,170
27								3,100				2,070								5,170
28								3,100		100		2,170						100		5,270
Sunday																				
30						200		3,300		100		2,270						300		5,570
31						100		3,400				2,270						100		5,670
660																				
Apr. 1					300	100		3,200		200		2,470					300	300		5,670
2								3,200		250		2,720						250		5,920
Holiday																				
4								3,200		100		2,820						100		6,020
Sunday																				
6								3,200				2,820								6,020
7								3,200				2,820		100		100		100		6,120
8								3,200				2,820				100				6,120
9								3,200				2,820				100				6,120
10						200		3,400		450		3,270				100		650		6,770
11								3,400				3,270				100				6,770
Sunday																				
13					300			3,100				3,270				100	300			6,470
14					550		60	2,610	100			3,170				100	650		60	5,880
15					650		110	2,010	200			2,970				100	850		110	5,080

16			600		160	1,460	455			2,515				100	1,055		160	4,075	
17			220		160	1,240				2,515				100	220		160	3,855	
18					160	1,240	600			1,915				100	600		160	3,255	
Sunday																			
20			265		160	975	400			1,515	100		100	100	765		260	2,590	
21		100			60	975		100		1,615		100		100		300	60	2,690	
22					60	975				1,615				100			60	2,690	
23					60	975				1,615		400		500		400	60	3,090	
24					60	975		700		2,315		600		1,100		1,300	60	4,390	
25					60	975		600		2,915		300		1,400		900	60	5,290	
Sunday																			
27			365		60	610		200		3,115				1,400	365	200	60	5,125	
28					60	610				3,115		100		1,500		100	60	5,225	
29					60	610				3,115				1,500			60	5,225	
30			100		60	510	1,200			1,915	400			1,100	1,700		60	3,525	
May 1					60	510	300			1,615	200			900	500		60	3,025	
2					60	510				1,615				900			60	3,025	
Sunday																			
4					60	510	400			1,215				900	400		60	2,625	
5					60	510				1,215				900			60	2,625	
6					60	510				1,215				900			60	2,625	
7					60	510				1,215				900			60	2,625	
8					60	510				1,215				900			60	2,625	
9					60	510				1,215				900			60	2,625	
Sunday																			
11					60	510				1,215				900			60	2,625	
12					60	510				1,215				900			60	2,625	
13					60	510				1,215				900			60	2,625	
14					60	510				1,215				900			60	2,625	
15					60	510				1,215				900			60	2,625	
16					60	510		100		1,315		100		1,000		200	60	2,825	
Sunday																			
18					60	510		200		1,515				1,000		200	60	3,025	
19					60	510				1,515				1,000			60	3,025	
20					60	510				1,515		100		1,100		100	60	3,125	
21					60	510				1,515		200		1,300		200	60	3,325	
22					60	510				1,515				1,300			60	3,325	
23					60	510	100	200		1,615		100		1,400	100	300	60	3,525	
Sunday																			
25					60	510				1,615				1,400			60	3,525	
26					60	510	200			1,415	410			990	610		60	2,915	
27					60	510				1,415				990			60	2,915	

Summary by days of wheat futures accounts definitely identified as belonging to Arthur W. Cutten combined with those operated and controlled by Cutten but carried under the names of relatives and associates.
1930–1931.
(In thousands of bushels, i. e., "000" omitted)

Date	May				July				September				December				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1931																				
28	....	....	....	....	....	....	60	510	....	....	....	1,415	....	....	....	990	....	....	60	2,915
29	....	....	....	....	....	....	60	510	....	....	....	1,415	....	....	....	990	....	....	60	2,915
Holiday																				
Sunday																				
ne 1	....	....	....	....	....	....	60	510	....	....	....	1,415	....	....	....	990	....	....	60	2,915
2	....	....	....	....	....	....	60	510	....	....	....	1,415	....	....	....	990	....	....	60	2,915
3	....	....	....	....	....	....	60	510	....	400	....	1,815	100	....	....	890	100	400	60	3,215
4	....	....	....	....	....	....	60	510	....	100	....	1,915	200	....	200	890	200	100	260	3,315
5	....	....	....	....	....	....	60	510	500	....	....	1,415	200	....	400	890	700	....	460	2,815
6	....	....	....	....	....	....	60	510	....	....	....	1,415	....	....	400	890	....	....	460	2,815
Sunday																				
8	....	....	....	....	....	....	60	510	....	....	....	1,415	....	200	400	1,090	....	200	460	3,015
9	....	....	....	....	....	....	60	510	....	....	....	1,415	....	....	400	1,090	....	....	460	3,015
10	....	....	....	....	....	....	60	510	....	....	....	1,415	....	400	400	1,490	....	400	460	3,415
11	....	....	....	....	310	....	60	200	400	....	....	1,015	....	....	400	1,490	710	....	460	2,705
12	....	....	....	....	200	60	....	....	845	100	....	270	200	....	400	1,290	1,245	160	400	1,560
13	....	....	....	....	....	....	....	....	....	....	....	270	....	....	400	1,290	....	....	400	1,560
Sunday																				
15	....	....	....	....	....	....	....	....	....	....	....	270	....	....	400	1,290	....	....	400	1,560
16	....	....	....	....	....	....	....	....	....	....	....	270	....	....	400	1,290	....	....	400	1,560
17	....	....	....	....	....	....	....	....	....	....	....	270	400	....	400	890	400	....	400	1,160
18	....	....	....	....	....	....	....	....	....	700	....	970	....	900	400	1,790	....	1,600	400	2,760
19	....	....	....	....	....	....	....	....	....	....	....	970	....	....	400	1,790	....	....	400	2,760
20	....	....	....	....	....	....	....	....	200	....	....	770	670	....	400	1,120	870	....	400	1,890
Sunday																				
22	....	....	....	....	....	....	....	....	....	200	....	970	....	400	400	1,520	....	600	400	2,490
23	....	....	....	....	....	....	....	....	....	400	....	1,370	....	100	400	1,620	....	500	400	2,990
24	....	....	....	....	....	....	....	....	870	....	....	500	1,420	....	400	200	2,290	....	400	700
25	....	....	....	....	....	....	....	....	....	....	....	500	....	....	400	200	....	....	400	700
26	....	....	....	....	....	....	....	....	....	....	....	500	300	....	500	....	300	....	500	500
27	....	....	....	....	....	....	....	....	....	100	....	600	200	....	700	....	200	100	700	600
day																				

29							100	....	....	500	....	....	700	....	100	....	700	500
30							....	300	....	800	....	400	700	400	....	700	700	1,200
1							....	400	....	1,200	....	800	600	1,100	....	1,200	600	2,300
2							....	....	....	1,200	....	....	600	1,100	....	....	600	2,300
3							180	400	....	1,420	....	200	600	1,300	180	600	600	2,720
Holiday																		
Sunday																		
6							....	100	....	1,520	....	200	600	1,500	....	300	600	3,020
7							....	100	....	1,620	75	....	475	1,300	75	100	475	2,920
8							....	100	....	1,720	....	200	475	1,500	....	300	475	3,220
9							100	....	....	1,620	....	300	175	1,500	100	300	175	3,120
10							400	200	....	1,420	....	200	100	1,625	400	400	100	3,045
11							220	100	....	1,300	....	200	100	1,825	220	300	100	3,125
Sunday																		
13							400	....	....	900	....	400	100	2,225	400	400	100	3,125
14							300	100	....	700	700	200	100	1,725	1,000	300	100	2,425
15							....	55	....	755	....	....	100	1,725	....	55	100	2,480
16							855	....	100	....	1,425	....	200	400	2,280	....	300	400
17							....	....	100	....	....	....	200	400	....	....	300	400
18							85	....	185	....	100	....	300	400	185	....	485	400
Sunday																		
20							....	....	185	....	....	....	300	400	....	....	485	400
21							....	665	....	480	....	500	200	800	....	1,165	200	1,280
22							....	350	....	830	....	600	200	1,400	....	950	200	2,230
23							....	....	....	830	....	....	200	1,400	....	....	200	2,230
24							200	200	....	830	285	100	200	1,215	485	300	200	2,045
25										830	....	....	200	1,215	....	....	200	2,045
Sunday																		
27										830	....	200	200	1,415	....	200	200	2,245
28										830	....	900	....	2,115	....	900	....	2,945
29										830	....	200	....	2,315	....	200	....	3,145
30										830	....	....	....	2,315	....	....	....	3,145
31										830	....	100	....	2,415	....	100	....	3,245
ug. 1							230	....	....	600	200	....	....	2,215	430	....	....	2,815
Sunday																		
3										600	810	....	110	1,515	810	....	110	2,115
4	....	300	....	300						600	....	200	25	1,630	....	500	25	2,530
5				300			500	....	....	100	200	1,100	....	2,505	700	1,100	....	2,905
6				300			300	300	....	100	200	....	....	2,305	500	300	....	2,705
7				300			200	300	....	200	1,020	400	....	1,685	1,220	700	....	2,185

Summary by days of wheat futures accounts definitely identified as belonging to Arthur W. Cutten combined with those operated and controlled by Cutten but carried under the names of relatives and associates.
1930–1931.
(In thousands of bushels, i. e., "000" omitted)

Date	May				July				September				December				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1931																				
8				300								200		400		2,085		400		2,585
Sunday																				
10				300								200	835	425	200	1,875	835	425	200	2,375
11		70		370								200	200	420	200	2,095	200	490	200	2,665
12				370								200		155	200	2,250		155	200	2,820
13				370								200	460		400	1,990	460		400	2,560
14				370					200					400		1,990	200	400		2,360
15				370									500	50	420	1,960	500	50	420	2,330
Sunday																				
17				370									500		670	1,710	500		670	2,080
18				370									720		815	1,135	720		815	1,505
19				370											815	1,135			815	1,505
20				370										300	815	1,435		300	815	1,805
21		100		470									900		1,215	935	900	100	1,215	1,405
22				470											1,215	935			1,215	1,405
Sunday																				
24				470										1,045	470	1,235		1,045	470	1,705
25		200		670										400	450	1,615		600	450	2,285
26				670											450	1,615			450	2,285
27				670											450	1,615			450	2,285
28				670											450	1,615			450	2,285
29				670										400	50	1,615		400	50	2,285
Sunday																				
31		500		1,170										400		1,965		900		3,135
Spet. 1				1,170												1,965				3,135
2				1,170												1,965				3,135
3		100		1,270												1,965		100		3,235
4				1,270												1,965				3,235
Holiday																				
Sunday																				
Holiday																				
8		100		1,370												1,965		160		3,335
9				1,370										185		2,150		185		3,520

10				1,370						2,150				3,520				
11				1,370		300	300		2,150	300	300		3,520					
12				1,370		100		100	2,150	100		100	3,520					
Sunday																		
14				1,370		300		100	1,850	300		100	3,220					
15				1,370		635		110	1,225	635		110	2,595					
16				1,370				110	1,225			110	2,595					
17				1,370				110	1,225			110	2,595					
18				1,370			100	10	1,225		100	10	2,595					
19				1,370				10	1,225			10	2,595					
Sunday																		
21				1,370				10	1,225			10	2,595					
22				1,370				10	1,225			10	2,595					
23	75		5	1,300			600	10	1,825	75	600	15	3,125					
24			5	1,300		10		10	1,815	10		15	3,115					
25			5	1,300		315		10	1,500	315		15	2,800					
26	100		5	1,200		285		10	1,215	385		15	2,415					
Sunday																		
28	200		5	1,000				10	1,215	200		15	2,215					
29			5	1,000		500		110	815	500		115	1,815					
30		200	5	1,200				110	815		200	115	2,015					
362																		
Oct. 1			5	1,200				110	815			115	2,015					
2			5	1,200				110	815			115	2,015					
3		400	5	1,600			110	100	915		510	105	2,515					
Sunday																		
5			5	1,600				100	915			105	2,515					
6	200		5	1,400		100	600		1,315	300	600	5	2,715					
7			5	1,400		120	200		1,395	120	200	5	2,795					
8	600		5	800		1,160	300		535	1,760	300	5	1,335					
9	400	200	205	800		100			435	500	200	205	1,235					
10	1,100	375	800	670			110		545	1,100	485	800	1,215					
Sunday																		
Holiday																		
13	200		1,000	670					545	200		1,000	1,215					
14	100		1,100	670					545	100		1,100	1,215					
15	100		1,200	670					545	100		1,200	1,215					
16	5		1,205	670					545	5		1,205	1,215					
17	260	190	1,275	670					545	260	190	1,275	1,215					
Sunday																		
19	200	200	1,275	670					545	200	200	1,275	1,215					
20			1,275	670					545			1,275	1,215					
21	100		1,375	670					545	100		1,375	1,215					

Summary by days of wheat futures accounts definitely identified as belonging to Arthur W. Cutten combined with those operated and controlled by Cutten but carried under the names of relatives and associates.
1930–1931.
(In thousands of bushels, i. e., "000" omitted)

Date	May				July				September				December				Total			
	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short	Bought	Sold	Long	Short
1931																				
22	90	....	1,465	670												545	90	....	1,465	1,215
23	....	....	1,465	670												545	....	....	1,465	1,215
24	1,100	400	2,165	670												545	1,100	400	2,165	1,215
Sunday																				
26	....	....	2,165	670												545	....	....	2,165	1,215
27	....	300	1,865	670												545	....	300	1,865	1,215
28	300	....	2,165	670												545	300	....	2,165	1,215
29	100	....	2,265	670												545	100	....	2,265	1,215
30	600	400	2,465	670												545	600	400	2,465	1,215
31	700	....	3,165	670												545	700	....	3,165	1,215
Nov.																				
Sunday																				
2	....	....	3,165	670												545	....	....	3,165	1,215
3	195	....	3,360	670												545	195	....	3,360	1,215
4	800	700	3,460	670												545	800	700	3,460	1,215
5	600	100	3,960	670										100	....	445	700	100	3,960	1,115
6	....	....	3,960	670												445	....	....	3,960	1,115
7	....	....	3,960	670												445	....	....	3,960	1,115
Sunday																				
9	....	....	3,960	670												445	....	....	3,960	1,115
10	....	....	3,960	670												445	....	....	3,960	1,115
Holiday																				
12	....	....	3,960	670												445	....	....	3,960	1,115
13	....	1,500	2,460	670												445	....	1,500	2,460	1,115
14	....	1,300	1,160	670												445	....	1,300	1,160	1,115
Sunday																				
16	....	....	1,160	670												445	....	....	1,160	1,115
17	300	500	960	670												445	300	500	960	1,115
18	....	....	960	670	200	....	200	....								445	200	....	1,160	1,115
19	200	....	1,160	670	....	130	70	....								445	200	130	1,230	1,115
20	....	1,415	345	1,270	....	70	....	....								445	....	1,485	345	1,715
21	....	500	95	1,520	....	....	....	....								445	....	500	95	1,965
Sunday																				

23	80	480	95	1,920											445	80	480	95	2,365
24	....	895	....	2,720											445	....	895	....	3,165
25	....	700	....	3,420									65	....	380	65	700	....	3,800
Holiday																			
27	300	500	....	3,620									40	....	340	340	500	....	3,960
28	....	....	....	3,620									105	....	235	105	....	....	3,855
Sunday																			
30	700	....	....	2,920									155	....	80	855	....	....	3,000
Dec. 1	1,350	....	....	1,570									70	....	10	1,420	....	....	1,580
2	....	....	....	1,570									....	....	10	....	....	....	1,580
3	210	....	....	1,360									10	....	....	220	....	....	1,360
4	65	....	....	1,295												65	....	....	1,295
5	20	65	....	1,340												20	65	....	1,340
Sunday																			
7	....	200	....	1,540												....	200	....	1,540
8	400	100	....	1,240												400	100	....	1,240
9	....	800	....	2,040												....	800	....	2,040
10	....	400	....	2,440												....	400	....	2,440
11	....	....	....	2,440												....	....	....	2,440
12	....	....	....	2,440												....	....	....	2,440
Sunday																			
14	400	....	....	2,040												400	....	....	2,040
15	....	....	....	2,040												....	....	....	2,040
16	400	....	....	1,640												400	....	....	1,640
17	....	....	....	1,640												....	....	....	1,640
18	300	....	....	1,340												300	....	....	1,340
19	....	....	....	1,340												....	....	....	1,340
Sunday																			
21	....	400	....	1,740												....	400	....	1,740
22	....	200	....	1,940												....	200	....	1,940
23	....	100	....	2,040	100	....	100	....								100	100	100	2,040
24	....	65	....	2,105	....	....	100	....								....	65	100	2,105
Holiday																			
Holiday																			
Sunday																			
28	....	....	....	2,105	....	....	100	....								....	....	100	2,105
29	....	100	....	2,205	....	....	100	....								....	100	100	2,205
30	....	....	....	2,205	....	....	100	....								....	....	100	2,205
31	....	....	....	2,205	....	....	100	....								....	....	100	2,205
Total.....	12,950	15,155			10,800	7,635			11,240	11,240			18,400	18,400		53,390	52,430		
and																			
Total...	23,685	25,890			26,285	26,185			19,965	19,965			46,790	46,790		116,925	119,030		
					200	200	(March)												

679 EXHIBIT "A".

Abstract of Exhibits.

(Abstracted pursuant to stipulation of the parties and Order of court.)

Complainant's Exhibits.

Exhibit 1.

The original complaint charging the appellant with violating the Grain Futures Act and rules and regulations made pursuant thereto.

Exhibit 2.

Certified copy of the application of the Board of Trade of the City of Chicago for designation as a "Contract Market" under the provisions of the Grain Futures Act and certified copy of the order under the hand and seal of Henry C. Wallace, Secretary of Agriculture, designating said Board of Trade as a "Contract Market" under the provisions of said Grain Futures Act.

Exhibit 3.

Four sheets of the Grain Ledger of C. D. Robbins & Company relative to accounts "R. J. C." and "H. C." Three sheets bear the notation in writing, "R. J. C." and one sheet "M. C.", and all four sheets bear the notation, "hold for J. R. Nauff—member's rate of commission".

Exhibit 4.

Financial Ledger sheets of C. D. Robbins & Company bearing initials "M. C." and "H. C."

Exhibit 5.

Street Book sheets of the Uhlmann Grain Company concerning daily transactions in the 1930 September Wheat Futures.

Exhibit 6.

Street Book sheets of the Uhlmann Grain Company concerning daily transactions in the 1930 December Wheat Futures.

Exhibit 7.

Street Book sheets of the Uhlmann Grain Company concerning daily transactions in 1931 May and July Wheat Futures.

680 Exhibit 8.

Street Book sheets of the Uhlmann Grain Company concerning daily transactions in 1931 December Wheat Futures.

Exhibit 9.

Street Book sheets of the Uhlmann Grain Company concerning daily transactions in 1933 May Wheat Futures.

Exhibit 10.

Grain Ledger sheets of the Uhlmann Grain Company concerning purchases and sales of Wheat Futures posted to accounts "57 Special" and "57 Special-A".

Exhibit 11.

Financial Ledger sheets of the Uhlmann Grain Company concerning financial transactions in account "57 Special".

Exhibit 12.

Financial Ledger sheets of the Uhlmann Grain Company concerning financial transactions in account "57 Special-A".

Exhibit 13.

A check dated July 13, 1931, drawn by the Uhlmann Grain Company to the order of Arthur Cutten, in the sum of $124,642.41 on the Continental Illinois Bank and Trust Company, endorsed by Arthur W. Cutten and stamped "paid".

Exhibit 14.

Letter dated at Chicago, Illinois on February 23, 1934, addressed to the Grain Futures Administration at Chicago, Illinois and signed by G. D. Egan for the Uhlmann Grain Company, "identifying certain accounts which are carried on our records under code as follows:

Code	Name and address
57 Special	Arthur W. Cutten, 231 S. La Salle St., Room 785
57 "A" Special	c/o Arthur W. Cutten, 231 S. La Salle St., Room 785".

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Exhibit 15.

Not offered.

Exhibit 16.

Street Book sheets of F. B. Keech & Company concerning daily transactions in 1930 May Wheat Futures.

Exhibit 17.

Street Book sheets of F. B. Keech & Company concerning daily transactions in 1930 July Wheat Futures.

Exhibit 18.

Street Book sheets of F. B. Keech & Company concerning daily transactions in 1930 July Wheat Futures.

Exhibit 19.

Street Book sheets of F. B. Keech & Company concerning daily transactions in 1930 September and December Wheat Futures, 1930 December Corn Futures, 1931 May Wheat Futures, 1931 May Corn Futures, 1931 July Wheat Futures, 1931 July Corn Futures, 1931 September Wheat Futures and 1931 September Corn Futures.

Exhibit 20.

Street Book sheets of F. B. Keech & Company concerning daily purchases of 1931 December Wheat Futures, 1932 May Wheat Futures and 1932 July Wheat Futures.

Exhibit 21.

Street Book sheets of F. B. Keech & Company concerning daily purchases of 1932 May Corn Futures.

Exhibit 22.

Street Book sheets of F. B. Keech & Company concerning daily purchases of 1932 May Corn Futures.

682 Exhibit 23.

Financial Ledger Sheets of F. B. Keech & Company concerning money transactions, profits and losses in "A. W. (Arthur W.) Cutten" account.

Exhibit 24.

Financial Ledger sheets of F. B. Keech & Company concerning money transactions, profits and losses in "L" account.

Exhibit 25.

Financial Ledger sheets of F. B. Keech & Company concerning money transactions, profits and losses in "E. M. L. Cutten" account.

Exhibit 26.

Financial Ledger sheets of F. B. Keech & Company concerning money transactions, profits and losses in "No. 97" account.

Exhibit 27.

Financial Ledger sheets of F. B. Keech & Company concerning money transactions, profits and losses in "R. J. Cutten" account.

Exhibit 28.

Financial Ledger sheets of F. B. Keech & Company concerning money transactions, profits and losses in "Maude Cutten" account.

Exhibit 29.

Grain Ledger sheets of F. B. Keech & Company concerning purchases and sales of Wheat Futures posted to account "No. 97".

Exhibit 30.

Grain Ledger sheets of F. B. Keech & Company concerning purchases and sales of Wheat Futures posted to "L" account.

683 Exhibit 31.

Grain Ledger sheets of F. B. [illegible] Company concerning purchases and sales of Wheat [illegible]utures posted to "R. J. Cutten" account.

Exhibit 32.

Grain Ledger sheets of F. B. Keech & Company concerning purchases and sales of Wheat Futures posted to "Maude Cutten" account.

Exhibit 33.

Grain Ledger sheets of F. B. Keech & Company concerning purchases and sales of Wheat Futures posted to "E. M. L. Cutten" account.

Exhibit 34.

Grain Ledger sheets of F. B. Keech & Company concerning purchases and sales of Wheat Futures posted to "A. W. Cutten (A. W. C.)" account.

Exhibit 35.

Letter addressed to F. B. Keech & Company dated September 15 1930 and signed by Arthur W. Cutten, guaranteeing the "L" account.

Exhibit 36.

Letter addressed to F. B. Keech & Company dated September 20, 1929 and signed by A. W. Cutten for R. J. Cutten, guaranteeing the "No. 97" account.

Exhibit 37.

Letter addressed to F. B. Keech & Company dated October 25, 1929 and signed by Arthur W. Cutten, guaranteeing the "R. J. Cutten" account.

Exhibit 38.

Letter addressed to F. B. Keech & Company dated December 16, 1931 and signed by Maude Cutten, constituting and appointing Arthur W. Cutten her agent and attorney in fact with full power and authority to act in her behalf in the purchase from said company of stocks, bonds and other se-
684 curities, grain, cotton, coffee, sugar and other commodities, including commodities "Futures", marginal purchases and short sales.

Exhibit 39.

Letter to F. B. Keech & Company dated March 22, 1930 and signed by Arthur W. Cutten, guaranteeing the account of Maude Cutten.

Exhibit 40.

Letter to F. B. Keech & Company dated December 10, 1929 and signed by Arthur W. Cutten, guaranteeing the account of E. M. L. Cutten.

Exhibit 41.

Letter to F. B. Keech & Company signed by Maude Cutten, authorizing the transfer of the credit balance in her account to the account of Arthur W. Cutten and stating that such transfer should be considered as full payment to her of all moneys due her, up to and including the date of transfer.

Exhibit 42.

Street Book sheets of Bartlett-Frazier Company concerning daily transactions in 1930 May Wheat Futures.

Exhibit 42-A.

Letter dated at Chicago, Illinois on March 3, 1934, addressed to the Grain Futures Administration, Chicago, Illinois and signed by J. Wade for Bartlett-Frazier Company, "identifying certain accounts which are carried on our records under code as follows:

Code	Name and Address
#7	A. W. Cutten, Chicago, Illinois
#20	A. W. Cutten, Chicago, Illinois
D. S.	D. J. Sandie, c/o A. W. Cutten, Chicago, Illinois"

Exhibit 43.

Street Book sheets of Bartlett-Frazier Company concerning daily transactions in 1930 July Wheat Futures.

685 Exhibit 44.

Street Book sheets of Bartlett-Frazier Company concerning daily transactions in 1930 September Wheat Futures.

Exhibit 45.

Street Book sheets of Bartlett-Frazier Company concerning daily transactions in 1930 December Wheat Futures.

Exhibit 46.

Street Book sheets of Bartlett-Frazier Company concerning daily transactions in 1931 May Wheat Futures.

Exhibit 47.

Street Book sheets of Bartlett-Frazier Company concerning daily transactions in 1931 July Wheat Futures.

Exhibit 48.

Street Book sheets of Bartlett-Frazier Company concerning daily transactions in 1931 September Wheat Futures.

Exhibit 49.

Street Book sheets of Bartlett-Frazier Company concerning daily transactions in 1931 December Wheat Futures.

Exhibit 50.

Street Book sheets of Bartlett-Frazier Company concerning daily transactions in 1932 May Wheat Futures.

Exhibit 51.

Grain Ledger sheets of Bartlett-Frazier Company concerning purchases and sales of Wheat Futures posted to accounts, "No. 7", "No. 20", "M. C.", "Mrs. No. 7" and "D. S."

686 Exhibit 52.

Financial Ledger sheets of Bartlett-Frazier Company concerning financial transactions in the same accounts.

Exhibit 53.

Financial Ledger sheets of Bartlett-Frazier Company concerning financial transactions in the same accounts.

Exhibit 54.

Financial Ledger sheets of Bartlett-Frazier Company concerning financial transactions in the same accounts.

Exhibit 55.

Letter from A. W. Cutten to Bartlett-Frazier Company acknowledging responsibility for the account of Maude Cutten. This letter appears in the record.

Exhibit 56.

Letter from A. W. Cutten to Bartlett-Frazier Company acknowledging responsibility for accounts "No. 20" and "D. S."

Exhibit 57.

Grain Ledger sheets of James Kidston & Company concerning purchases and sales of Wheat Futures posted to account "No. 8".

Exhibit 58.

Financial Ledger sheets of James Kidston & Company concerning financial transactions in account "No. 8".

Exhibit 59.

Grain Ledger sheets of James Kidston & Company concerning purchases and sales of Wheat Futures posted to account "No. 59".

687 Exhibit 60.

Financial Ledger sheets of James Kidston & Company concerning financial transactions in account "No. 59".

Exhibit 61.

Street Book sheets of James Kidston & Company concerning daily transactions in 1930 December Corn Futures.

Exhibit 62.

Letter dated August 1, 1931, addressed to James Kidston & Company and signed by A. W. Cutten, acknowledging responsibility for and guaranteeing accounts "No. 8", and "No. 59". This letter was read into the record.

Exhibit 63.

Street Book sheets of Jackson Brothers Boesel & Company concerning daily transactions in 1930 May Wheat Futures, 1930 July Wheat Futures, 1930 September Wheat Futures, 1930 December Wheat Futures and 1932 May Wheat Futures.

Exhibit 64.

Grain Ledger sheets of Jackson Brothers Boesel & Company concerning purchases and sales of Wheat Futures posted to accounts: "40", "209-C", "209-C Special", "210-C", "L. F. C.", "R. C.", "211-C" and "212-C".

Exhibit 65.

Financial Ledger sheets of Jackson Brothers Boesel & Company concerning financial transactions in account "40".

Exhibit 66.

Financial Ledger sheets of Jackson Brothers Boesel & Company concerning financial transactions in account "209-C".

688 Exhibits 67 to 72, Inclusive.

Financial Ledger sheets of Jackson Brothers Boesel & Company concerning financial transactions in accounts, "212-C", "210-C", "L. F. C.", "R. C.", "211-C" and "209-C Special".

Exhibit 73.

Letter dated at Chicago, Illinois, February 23, 1934, addressed to the Grain Futures Administration at Chicago, Illinois and signed by Russell L. Stern for Jackson Brothers Boesel & Company, "identifying certain accounts which are carried on our records under code as follows:

Code	Name and Address
40	Arthur W. Cutten, Chicago, Ill.
C-209	Arthur W. Cutten, Chicago, Ill.
C-209 Special	Arthur W. Cutten, Chicago, Ill.
C-210	Arthur W. Cutten, Chicago, Ill.
C-211	Ralph Cutten, Toronto
C-212	Ralph Cutten, Toronto
L. F. C.	Arthur W. Cutten, Chicago, Ill.
49	Arthur W. Cutten, Chicago, Ill.
100	Arthur W. Cutten, Chicago, Ill.
5049	Arthur W. Cutten, Chicago, Ill.
6600	Arthur W. Cutten, Chicago, Ill.
66	Harry Ash, Chicago, Ill."

Exhibit 74.

Letter dated at Chicago, Illinois February 28, 1934 addressed to the Grain Futures Administration at Chicago, Illinois and signed by Joseph R. Kessler for Clement Curtis & Company, "identifying certain account which are carried on our records under code as follows:

Code	Name and Address
C. W. A.	Arthur W. Cutten, Chicago, Ill.
#208-C	Arthur W. Cutten, Chicago, Ill.
#785	Arthur W. Cutten, Chicago, Ill.
Maude Cutten	Maude Cutten, Chicago, Ill.
Ralph Cutten	Ralph Cutten, Toronto, Ont., Canada
S. Spl.	Arthur W. Cutten, Chicago, Ill."

Exhibit 75.

Street Book sheets of Clement Curtis & Company concerning daily transactions in Wheat Futures expiring in the year 1930.

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Exhibit 76.

Street Book sheets of Clement Curtis & Company concerning daily transactions in Wheat Futures expiring in the year 1931.

Exhibit 77.

Street Book sheets of Clement Curtis & Company concerning daily transactions in Wheat Futures expiring in the year 1932.

Exhibits 78 to 80, Inclusive.

Not offered.

Exhibit 81.

Grain Ledger sheets of Clement Curtis & Company concerning purchases and sales of Wheat Futures posted to account "M. C." (Maude Cutten).

Exhibit 82.

Financial Ledger cards of Clement Curtis & Company concerning financial transactions in account "M. C." (Maude Cutten).

Exhibit 83.

Grain Ledger sheets of Clement Curtis & Company concerning purchases and sales of Wheat Futures in account "R. C." (Ralph Cutten).

Exhibit 84.

Financial Ledger Sheets of Clement Curtis & Company concerning financial transactions in account "R. C." (Ralph Cutten).

Exhibit 85.

Grain Ledger sheets of Clement Curtis & Company concerning purchases and sales of Wheat Futures posted to account "S-Special".

690 Exhibit 86.

Financial Ledger sheets of Clement Curtis & Company concerning financial transactions in "S-Special" account.

Exhibit 87.

Grain Ledger sheets of Clement Curtis & Company concerning purchases and sales of Wheat Futures posted to account "785".

Exhibit 88.

Financial Ledger sheets of Clement Curtis & Company concerning financial transactions in account "785".

Exhibit 89.

Grain Ledger sheets of Clement Curtis & Company concerning purchases and sales of Wheat Futures posted to account "209-C".

Exhibit 90.

Financial Ledger sheets of Clement Curtis & Company concerning financial transactions in account "209-C".

Exhibit 91.

Grain Ledger sheets of Clement Curtis & Company concerning purchases and sales of Wheat Futures posted to account "C. W. A.".

Exhibit 92.

Financial Ledger sheets of Clement Curtis & Company concerning financial transactions in account "C. W. A."

Exhibit 93.

Grain Ledger sheets of Clement Curtis & Company concerning purchases and sales of Wheat Futures posted to account "A. W. C." (Arthur W. Cutten).

691 Exhibit 94.

Financial Ledger sheets of Clement Curtis & Company concerning financial transactions in account "A. W. C." (Arthur W. Cutten).

Exhibit 95.

Street Book sheets of William J. Springer concerning daily purchases and sales of Wheat Futures for accounts "20", "30" and "150".

Exhibit 96.

Financial Ledger sheets of William J. Springer concerning financial transactions in accounts "20", "30" and "150".

Exhibit 97.

Letter dated at Chicago, Illinois, March 13, 1934, addressed to the Grain Futures Administration at Chicago, Illinois and signed by William J. Springer, "identifying certain accounts carried on my records under code as follows:

Code	Name and Address
30	Mr. A. Cutten, Chicago, Illinois
20	Mr. A. Cutten, Chicago, Illinois
150	Mrs. Alys Springer, Saugatuck, Mich.
80	Moe Singer, Chicago, Illinois."

704 COMPLAINANT'S EXHIBIT 98.

Received

DEPARTMENT OF AGRICULTURE
Washington, D. C.

May 11 1934

Pursuant to Section 661, Title 28, of the United States Code, I Hereby Certify that the following and annexed are true, correct and compared typewritten copies, the originals of which are on file in the United States Department of Agriculture of:

General Rules and Regulations for carrying out the provisions of The Grain Futures Act of September 21, 1922 with respect to contract markets, promulgated by the Secretary of Agriculture June 22, 1923.

Amendment to the General Rules and Regulations for carrying out the provisions of The Grain Futures Act of September 21, 1922, promulgated by the Secretary of Agriculture January 20, 1926.

Amendment to the General Rules and Regulations for carrying out the provisions of The Grain Futures Act of September 21, 1922, promulgated by the Secretary of Agriculture December 15, 1933.

Witness my hand and the seal of the United States Department of Agriculture.

R G TUGWELL
(Seal) *Acting Secretary of Agriculture.*

705 DEPARTMENT OF AGRICULTURE

Washington, D. C.

By virtue of the authority vested in the Secretary of Agriculture by the Grain Futures Act, approved September 21, 1922 (42 Stat. 998), I, Henry C. Wallace, Secretary of Agriculture, do make, prescribe, and give public notice of the rules and reguiations hereto annexed, to be in force and effect until amended or superseded under the authority of said Act.

In testimony whereof, I have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed in the City of Washington this 22 day of June, 1923.

(Signed) HENRY C. WALLACE
(Seal) *Secretary of Agriculture.*

706 UNITED STATES DEPARTMENT OF AGRICULTURE

Washington, D. C.

General Rules and Regulations for Carrying Out the Provisions of the Grain Futures Act of September 21, 1922, With Respect to Contract Markets.

1. These rules and regulations are made and prescribed with respect to contract markets under the Grain Futures Act of September 21, 1922, a copy of which is hereto annexed. These rules and regulations shall apply and be enforced only in accordance with and subject to the provisions of said Act, and shall not prevent the legitimate application or enforcement of any valid by-law, rule, regulation, or requirement of any contract market which is not inconsistent or in conflict with the Act and these rules and regulations.

2. Each contract market shall make, or cause to be made by its clearing members, reports to the Grain Futures Administration showing the facts specified in this regulation upon forms prescribed for the purpose by the Grain Futures Administration. If such contract market has a clearing house organization which obtains and keeps reliable reports and records, reports may be accepted from such clearing house organization, and the members of such organization may be relieved from making individual reports, to the extent that the clearing house organization by authorization of such contract market supplies the facts called for by these regulations.

Except when otherwise specified in writing by the Grain Futures Administration upon good cause shown, the reports shall be made as soon as possible after the close of the market on each business day, and not later than thirty minutes before the official opening of the trading session on the next following business day. Each such report shall be prepared carefully, but in case any errors or omissions are discovered a memorandum thereof shall be furnished as soon as possible or with the next succeeding report. Each contract market shall deliver such reports or cause them to be delivered to the Grain Futures Administration in the city where such contract market is located. If there be no office of the Administration in such city, the contract market shall mail such reports or cause them to be mailed in accordance with the instructions of the officer in charge of the Grain Futures Administration.

There shall be a report by or for each clearing member,

which shall include all contracts of sale of grain for future delivery, made on or subject to the rules of such contract
707 market, to which he is a party either as seller or buyer.

Such report shall show separately for each kind of grain and each delivery month the following facts:

(a) the net position at the beginning of the period covered by the report;

(b) the quantity of grain purchased and the quantity of grain sold on such contracts during the period covered by the report;

(c) the quantity of grain delivered and the quantity of grain received on such contracts during the period covered by the report;

(d) the net position at the end of the period covered by the report;

(e) the aggregate of all "long" and the aggregate of all "short" accounts carried at the end of the period covered by the report by the clearing member for whom the report is made, and

(f) the net position, at the end of the period covered by the report, of each separate account carried by such clearing member, when such net position equals or exceeds such amount as shall be specified in a written notice from time to time by the Grain Futures Administration to such contract market.

For the purposes of item (f), a distinguishing designation shall be used instead of the name of any person, but the name and address of such person shall be given upon request to a representative of the Grain Futures Administration authorized for the purpose by the officer in charge thereof. Such designation shall always be used for the same person and not for any other person and may be changed only by or with the approval of such representative.

3. Each member of a contract market shall, in accordance with the requirements of subdivision (b) of section 4 and subdivision (b) of section 5 of the Act, keep the records required thereby with respect to transactions for future delivery and cash transactions, in chronological order in such manner as to be readily accessible. He shall exhibit the same for inspection, or shall furnish true information or reports as to the contents or the meaning thereof, when and as requested by a representative of the United States Department of Agriculture authorized for the purpose by the officer in charge of the Grain Futures Administration. Each member shall when and as requested by such representative of the Department of Agriculture make reports showing the identification, the

kind, the grade, and the price of grain bought or sold by
708 such member in the cash grain market. The records as to transactions for future delivery shall be so kept as to show whether or not the persons for whom such transactions are executed by each member are engaged in the cash grain business.

4. No representative of the Department of Agriculture shall, without the consent of the member, divulge or make known in any manner, except in so far as such representative may be required in order to perform his official duties or by a court of competent jurisdiction, any facts or information regarding the business of a member of a contract market which may come to the knowledge of such representative through any inspection or examination of the reports or records of, or through any information given by, such member pursuant to the Act and these rules and regulations.

5. Each contract market shall as soon as possible from time to time furnish to the office of the Grain Futures Administration to which other reports are made reports showing all changes proposed and/or approved in membership or by-laws, rules, or regulations, and any official orders or announcements of the board of trade, not previously reported.

6. Each member of a contract market shall furnish, or cause to be furnished or exhibited, to the governing board of such contract market when requested by it, and to the officer in charge of the Grain Futures Administration or his representative when requested by him, a true copy of any report, circular, letter or telegram published or given general circulation by such member concerning crop or market information or conditions that affect or tend to affect the price of commodities, and the true source or authority of such member for the information therein contained.

7. Every member of a contract market shall promptly report to the governing board of such contract market and to the officer in charge of the Grain Futures Administration, or his representative, all information in the possession of such member relating to any attempted manipulation of prices or corner of any grain by any dealer or operator upon such board.

8. For the purposes of these rules and regulations, unless the context otherwise require,

(a) words in the singular form import the plural and vice versa, as the case may demand,

(b) "person" includes individuals, associations, partnerships, corporations, and trusts,

(c) the act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust, within the scope of his employ-
709 ment or office, shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust as well as of such official, agent, or other person,

(d) "grain" means wheat, corn, oats, barley, rye, flax, and sorghum,

(e) "future delivery" does not include any sale of cash grain for deferred shipment or delivery,

(f) "board of trade" means any exchange or association, whether incorporated or unincorporated, of persons who shall be engaged in the business of buying or selling grain or receiving the same for sale on consignment,

(g) "contract market" means a board of trade designated by the Secretary of Agriculture as a contract market under the Grain Futures Act.

(h) "contract of sale" includes sales, agreements of sale, and agreements to sell,

(i) "delivery month" means the month of delivery specified in a contract of sale of grain for future delivery,

(j) "clearing member" means a member of a contract market whose name appears as seller or as buyer of a contract of sale of grain for future delivery made on or subject to the rules of such contract market, regardless of whether such contract be actually cleared or not, and

(k) "Grain Futures Administration" means the officer or officers designated by the Secretary of Agriculture to carry out the provisions of the Grain Futures Act.

710 DEPARTMENT OF AGRICULTURE
Washington

By virtue of the authority vested in the Secretary of Agriculture by The Grain Futures Act approved September 21, 1922 (42 Stat. 998), I, William M. Jardine, Secretary of Agriculture, do hereby amend the "General Rules and Regulations for Carrying out the Provisions of The Grain Futures Act of September 21, 1922, with Respect to Contract Markets," as follows:

Add at the end of subdivision (f) of section 2,

"Whenever any member carries or has under his control more than one account with any clearing member of a contract market, and the total volume of such accounts is equal

to or in excess of the amount fixed in accordance with subdivision (f) of section 2 of these Rules and Regulations, then the total long and the total short position of all such accounts shall be reported and the names of all persons interested in such accounts shall be furnished to the Supervisor in Charge."

"Whenever a member has under his control an amount of wheat, corn, oats, barley, rye, flax, or sorghum equaling or exceeding the amount fixed in accordance with subdivision (f) of section 2 of these Rules and Regulations and files for execution an order for the purchase or sale of any grain future such individual shall report that day to the Grain Futures Administration his total long and/or total short positions in the several futures in that grain in the market."

"Each contract market shall make, or cause to be made, by its non-clearing members reports showing all or such part of the facts required to be shown by or for clearing members as the Grain Futures Administration shall from time to time specify."

"Whenever any non-member of a contract market has under his control an amount of wheat, corn, oats, barley, rye, flax, or sorghum equaling or exceeding the amount fixed in accordance with subdivision (f) of section 2 of these Rules and Regulations, and files for execution an order for the purchase or sale of any grain future, such non-member shall comply with all the requirements and regulations applicable under the Rules and Regulations to members of the contract markets."

711 Add at the end of section 2,

"In filing name and address of principals of accounts it is not sufficient simply to file the information as the account of John Doe Grain Company, Minneapolis office, New York office, or London office, but the names and addresses of actual individuals must be given."

In testimony whereof I have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed in the City of Washington this twentieth day of January, 1926.

(Signed) W. M. JARDINE
Secretary of Agriculture.

(Seal)

712 DEPARTMENT OF AGRICULTURE
Washington, D. C.

By virtue of the authority vested in the Secretary of Agriculture by The Grain Futures Act, approved September 21, 1922, 42 Stat. 998, 7 U. S. C. Secs. 1-17, I, H. A. Wallace Secretary of Agriculture, do make, prescribe, and give public notice of the following amendment to the rules and regulations under said Act to be in force and effect on and after December 15, 1933 until amended or superseded under the authority of said Act.

Section 3 of said rules and regulations is amended by adding thereto the following paragraph:

Each member of a contract market shall keep for a period of five (5) years from the date thereof the records required to be kept by subdivision (b) of section 4 and subdivision (b) of section 5 of The Grain Futures Act including all orders, trading cards, street books, journals, ledgers, margin records, cancelled checks, copies of confirmations and statements of purchase and sale, together with all other data and memoranda and records of every sort pertaining to transactions in cash grain and of contracts of sale of grain for future delivery. This requirement shall apply to all existing records without regard to date.

In testimony whereof I have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed in the City of Washington, this 15th day of December, 1933.

(Seal)

(Signed) H. A. WALLACE
Secretary of Agriculture.

Exhibit 99.

Letter dated February 6, 1926, signed by L. A. Fitz, Grain Exchange Supervisor, issuing a call for daily reports of Grain Futures transactions on the Chicago Board of Trade. The letter contained instructions as to the filling out of blanks which were forwarded under separate cover. This was a general letter and does not show on its face the address of any specific person.

692 Exhibit 100.

Instructions for Filling In Form 113 G. F. A.

Report of: Use number instead of firm name in filling out this line. This is to prevent accidental disclosure of your firm's business.

Date: Facts given in this report are as of the close of business on the date specified herein.

Show all volume with the last (000) omitted.

Grain and Futures: List all futures open or traded in this date.

Trades Today: Show volume of each future traded in by firms.

Name of Broker: List here the names of all Chicago brokers with whom you have open contracts or who executed your trades.

Long or Short: Show net position for all open interests by futures by firms.

Aggregate of all "Long" and all "Short" Open Accounts: List here the total long and/or total short (not net) of all open interests on your books. This includes both your own and your customers. The figures given here must balance with the sums of the nets in the "long" or "short" column.

Net Position of Accounts Designated Under Section 2, Paragraph 1: List here each and every account (both your customers and your own) which equals or exceeds 500,000 bushels wheat, corn or oats, or 200,000 bushels of rye.

Designation of each account by number or letter must be made so that it can be identified with the original account on your books.

In an accompanying letter identify each such special account by giving name and address of principal corresponding to code designation. Do not change code designation of accounts without first securing permission from the Grain Futures Administration.

If one sheet does not furnish sufficient space use as many as are necessary.

Very truly yours,
L. A. Fitz,
Grain Exchange Supervisor.

Exhibit 101.

Blank form "113" prepared, printed and furnished by the Government to be used by members of "Contract Markets" in making reports to the Grain Futures Administration.

Complainants Exhibit 102

Form 112 G. F. A.

UNITED STATES DEPARTMENT OF AGRICULTURE

GRAIN FUTURES ADMINISTRATION

ROOM 908, 332 SOUTH LA SALLE STREET, CHICAGO

Received

See instructions on back of this sheet

REPORT OF Use code number 000 omitted [redacted] FOR _____ (Month) (Day) (Year)

(Thousands of bushels; i. e., 000 omitted)

GRAIN AND FUTURES	TRADES TO-DAY Bought	TRADES TO-DAY Sold	NAME OF BROKER (Show address, if not in Chicago)	NET POSITION WITH BROKER Long	NET POSITION WITH BROKER Short
May wht.	205	100	John Doe Gr.Co.	375	
" "	None		Smith Bros.		135
" "	150	50	Brown Gr. Co.	590	
July wht.	None		John Doe Gr.Co.		375
May corn	75	150	" " " "		580
July oats	None		Smith Bros.		585
May rye	25	45	John Doe Gr.Co.	320	

	TOTAL OF "LONG" OPEN COMMITMENTS	TOTAL OF "SHORT" OPEN COMMITMENTS	
			WHEAT
May	1175	345	
July	110	485	
Sept	0	0	
Dec	0	0	
Total	1285	830	
			CORN
May	325	905	
July	0	0	
Sept	0	0	
Dec	0	0	
Total	325	905	
			OATS
May			
July	320	905	
Sept	0	0	
Dec	0	0	
Total	320	905	
			RYE
May	465	145	
July	0	0	
Sept	0	0	
Dec	0	0	
Total	465	145	
			BARLEY
May			
July			
Sept			
Dec			

NET POSITION OF ACCOUNTS DESIGNATED UNDER SECTION 2, PARAGRAPH 1, OF REGULATIONS

ACCOUNT (Number or Letter)	DELIVERY MONTH AND GRAIN	BUSHELS LONG	BUSHELS SHORT
No. X	May wheat	565	
No. 10	May corn		675
No. 10	July oats		675
No. 15	May rye	205	

P2R

Instructions

Date should show month, day, and year.

In the first column, fill in the grain and the future.

Show trades with each broker separately; likewise, net position or open contracts.

Totals of "Long" and of "Short" open commitments should include not only all amounts held for customers, but also any open interest belonging to the firm itself.

Show "odd months" on blank line for each grain.

Show all quantities in thousands of bushels; that is, omit "000."

693 Exhibit 103.

Carbon copy of letter dated February 11, 1926, addressed to Mr. Arthur W. Cutten and written by L. A. Fitz, Grain Exchange Supervisor. This letter mentioned the call for reports sent on February 6 and stated that no reports had been received; the letter requested Mr. Cutten to forward the report for February 8, to Mr. Fitz not later than Monday, February 15, and also requested that future reports be rendered in accordance with the requirements and regulations.

Exhibits 104 to 269, Inclusive.

These exhibits are reports to the Grain Futures Administration in Chicago made on behalf of Arthur W. Cutten from February 13, 1926, to February 25, 1927, inclusive, reflecting his standing from time to time with respect to open commitments in Grain Futures on the Board of Trade of the City of Chicago.

Exhibit 270.

Copy of letter dated February 26, 1927, signed by L. A. Fitz, Grain Exchange Supervisor, suspending reporting requirements for individuals. This was a general letter addressed to persons and firms reporting to the Grain Futures Administration.

Exhibit 271.

Copy of a letter dated November 4, 1927, written by L. A. Fitz, Grain Exchange Supervisor, addressed to Arthur M. Cutten, requesting Mr. Cutten to file reports and enclosing a supply of Form #113 to be used for that purpose.

Exhibits 272 to 357, Inclusive.

These exhibits are reports to the Grain Futures Administration in Chicago made on behalf of Arthur W. Cutten From November 4, 1927, to September 22, 1928, inclusive, reflecting his standing from time to time with respect to open commitments in Grain Futures on the Board of Trade of the City of Chicago.

694 Exhibit 358.

Copy of letter dated January 6, 1931 written by L. A. Fitz, Grain Exchange Supervisor, and addressed to Arthur W. Cutten, calling upon Mr. Cutten to report his Chicago Grain Futures transactions beginning as of the close of business January 5, 1931. The letter advised Mr. Cutten of his reporting number and indicated that blanks for rendering reports, as well as a set of instructions and a dummy report sheet to illustrate the manner in which reports were to be made out, were enclosed.

Exhibits 359 to 361, Inclusive.

These exhibits are reports to the Grain Futures Administration in Chicago made on behalf of Arthur W. Cutten from January 5, 1931, to January 7, 1931, inclusive, reflecting his standing from time to time with respect to open commitments in Grain Futures on the Board of Trade of the City of Chicago. These reports appear to be in a handwriting different from that appearing on reports filed during the years 1926 to 1928, inclusive, and in evidence herein.

Exhibit 361-A.

"January 15, 1931

"Mr. Arthur W. Cutten,
231 South LaSalle St.,
Chicago, Illinois.

Dear Sir:

In response to our call for report on your Chicago grain futures transactions we received under date of January 7th a report showing transaction and open interest in July wheat.

Apparently you have misunderstood the meaning of this call for report and have simply reported on the one grain and future in which you made a transaction on January 7th. This call was made for complete report upon your Chicago

grain futures transactions and at that time our records show that you had open interests in other grain than the July wheat.

Will you kindly send a corrected report for January 7th and keep in mind the requirement regarding additional reports.

Very truly yours,

LAF:LL *Grain Exchange Supervisor."*

695 Exhibits 362 to 401, Inclusive.

These exhibits are reports to the Grain Futures Administration in Chicago made on behalf of Arthur W. Cutten on certain days reflecting his standing from time to time with respect to certain open commitments in Grain Futures on the Board of Trade of the City of Chicago during the period from January 7, 1931, to December 29, 1931, inclusive. These reports were filed during the period from January 7, 1931, to March 23, 1932, inclusive. Where handwriting was used in these reports, the handwriting appears to be different than that in reports filed during the years 1926 to 1928, inclusive.

Exhibit 402.

This is a summary prepared by the office of L. A. Fitz, Grain Exchange Supervisor in Chicago, and discloses all reports rendered by the various Grain Commission Houses to the Chicago office of the Grain Futures Administration, covering the net positions of Arthur W. Cutten in Grain Futures on the Board of Trade of the City of Chicago during the years 1930 and 1931.

Exhibit 403.

UNITED STATES DEPARTMENT OF AGRICULTURE
Grain Futures Administration
Chicago, Illinois.

Field Office: March 15, 1932
Room 906, 332 So. LaSalle St.
Mr. A. W. Cutten
231 South LaSalle Street,
Chicago, Illinois.

Dear Sir:

It has come to our knowledge that you have failed to comply with our reporting requirements as provided in the regu-

lations issued by the Secretary of Agriculture which read as follows:

696 "Whenever any member carries or has under his control more than one account with any clearing member of a contract market, and the total volume of such accounts is equal to or in excess of the amount fixed in accordance with subdivision (f) of section 2 of these rules and regulations, then the total long and the total short position of all such accounts shall be reported and the names of all persons interested in such accounts shall be furnished to the supervisor in charge.

"Whenever a member has under his control an amount of wheat, corn, oats, barley, rye, flax, or sorghum equaling or exceeding the amount fixed in accordance with subdivision (f) of section 2 of these rules and regulations, and files for execution an order for the purchase or sale of any grain future, such individual shall report that day to the Grain Futures Administration his total long and/or total short positions in the several futures in that grain in the market.

"Each contract market shall make, or cause to be made, by its nonclearing members reports showing all or such part of the facts required to be shown by or for clearing members as the Grain Futures Administration shall from time to time specify."

697 Your attention was directed to this matter by our letters of January 6, 1931 and January 15, 1931. Examination of records disclosed the fact that there have been many days during the past year when your reports were due but were not made in accordance with the regulations.

You are hereby called upon to render reports in compliance with the regulations quoted herein beginning, for the present, with the close of business November 30, 1931. Be sure to include in such reports each and every account in which you have an interest in the open contracts or over which you exercise any direction or control.

Kindly see to it that these back reports reach us promptly and that current reports come forward each day they are due.

Very truly yours,

(Signed) L. A. Fitz,

Grain Exchange Supervisor

LAF:LE

Exhibit 404.

Certified copy of a Western Union telegram, dated February 23, 1930, signed by Arthur M. Hyde, Secretary of Agriculture and addressed to Arthur Cutten. The telegram states:

"It is reported to me that you have been operating on the bear side of the grain market and that these operations have contributed to the collapse of the market. Stop I have no right or authority to suggest any course to any business man in his own business but just in the public interest if you could abandon such a course it would help many thousands of people in a time of distress Stop If the report is not true then disregard my anxiety in the matter."

Exhibit 405.

Certified copy of a telegram dated February 25, 1930, addressed to A. M. Hyde, Secretary of Agriculture, signed by Arthur W. Cutten. The telegram states:

"Your wire received and your information misleading I have not been very active in the markets my activity for last two weeks consisted of selling about four hundred privileges each way I dont think I have sold a bushel of wheat during that time except to protect the trades put."

698 Exhibit 406.

Letter dated at Chicago, Illinois, March 9, 1934, addressed to the Grain Futures Administration in Chicago, Illinois and signed by L. E. Rigg for F. B. Keech & Company, "identifying certain accounts which were carried under code on the records of F. B. Keech & Company during the years 1930 and 1931, as follows:

Code	Name and Address
A. W. C.	Arthur W. Cutten, 231 S. LaSalle St., Chicago.
M. C.	Maude B. Cutten, c/o A. W. Cutten, 231 S. La Salle St., Chicago.
E. M. L. C.	E. M. L. Cutten, c/o A. W. Cutten, 231 South La Salle St., Chicago.
L.	Arthur W. Cutten, 231 S. LaSalle St., Chicago.
#97	Ralph J. Cutten, c/o A. W. Cutten, 231 S. La Salle St., Chicago.
R. J. C.	Ralph J. Cutten, c/o A. W. Cutten, 231 S. La Salle St., Chicago.

Exhibit 412.

This is a chart in graph form. It contains two separate graphs; the first purporting to show transactions of Arthur W. Cutten in 1930 May Wheat from April 5 to April 26, 1930; and the second purporting to show the daily change in the closing price in the same Future between the same dates. This exhibit purports to show the effect of the graphed transactions upon closing prices.

Exhibit 413.

This is a chart in graph form. It contains two separate graphs; the first purporting to show transactions of Arthur W. Cutten in 1930 July Wheat from June 12 to June 21, 1930; and the second purporting to show the daily change in
699 the closing price in the same Future between the same dates. This exhibit purports to show the effect of the graphed transactions upon closing prices.

Exhibit 414.

This exhibit is a printed pamphlet prepared by the Grain Futures Administration as United States Department of Agriculture's Statistical Bulletin No. 41 and dated September, 1933. It is entitled "Wheat Futures, Volume of Trade, Open Commitments and Prices from January 2, 1930 to December 31, 1932." It contains 100 printed pages in which are shown in various tables the daily volume of trading, open commitments, opening high, low and closing prices of wheat Futures on the Chicago Board of Trade during the years 1931 and 1932.

Exhibit 415.

This is a chart in graph form. It contains two separate graphs; the first purporting to show transactions of Arthur W. Cutten in 1931 July Wheat from November 28 to December 31, 1930; and the second purporting to show the daily change in the closing price in the same Future between the same dates. This exhibit purports to show the effect of the graphed transactions upon closing prices.

Exhibit 416.

This is a chart in graph form. It contains two separate graphs; the first purporting to show transactions of Arthur W. Cutten in 1931 July Wheat from February 11 to April 2, 1931; and the second purporting to show the daily change in the closing price in the same Future between the same dates. This exhibit purports to show the effect of the graphed transactions upon closing prices.

Exhibit 417.

This is a chart in graph form. It contains two separate graphs; the first purporting to show transactions of Arthur W. Cutten in 1930 December Wheat from August 8 to August 14, 1930; and the second purporting to show the daily change in the closing price in the same Future between the same dates. This exhibit purports to show the effect of the graphed transactions upon closing prices.

700 Exhibit 418.

This is a chart in graph form. It contains two separate graphs; the first purporting to show transactions of Arthur W. Cutten in 1932 May Wheat from November 12 to November 27, 1931; and the second purporting to show the daily change in the closing price in the same Future between the same dates. This exhibit purports to show the effect of the graphed transactions upon closing prices.

RESPONDENT'S EXHIBITS.

Exhibit "A".

Power of Attorney running from Ralph J. Cutten to Arthur W. Cutten and found in the files of F. B. Keech & Company.

Exhibit "B".

Letter dated at Chicago, Illinois, March 13, 1934, addressed to the Grain Futures Administration in Chicago, Illinois, and

signed by William J. Springer, "identifying certain accounts carried on my records under code as follows:

Code	Name and Address
30	Mr. A. Cutten
20	Mrs. A. Cutten
150	Mrs. Alys Springer
80	Moe Singer"

This was a copy of complainant's exhibit #97 which had been retained by William J. Springer for his files.

701 Exhibit "C".

An article by John R. Mauff, entitled "The Vindicated Speculator", appearing in the Chicago Journal of Commerce, under date of December 19, 1932.

Exhibit "D".

Reprint of an article from the October, 1930 issue of "Russell's Review", entitled "A Grain Cataclysm", by John R. Mauff.

Exhibit "E".

An article by John R. Mauff, entitled "Grain".

Exhibit "F".

Statement of Dr. J. W. T. Duvel, Chief, Grain Futures Administration, Department of Agriculture, before the Agricultural Committee of the House of Representatives of the 73rd Congress, in a hearing upon the "Commodities Act".

Exhibit "G".

Statement of Robert P. Boylan, Vice President of Chicago Board of Trade, Chicago, Illinois before the Agricultural Committee of the House of Representatives of the 73rd Congress, in a hearing upon the "Commodities Act".

Exhibit "H".

This is a letter of instructions for filling in form "113 G. F. A." and is identical with complainant's exhibit #100 except that in paragraph entitled, "Net Position of Accounts Designated under Section 2, Paragraph 1", the words "in any one future" are added at the end of the paragraph.

Exhibit "I".

Not offered.

702 Exhibit "J".

Copy of extracts from articles in the "Financial Chronicle" relating to the National Grain Stabilization Corporation. These extracts were read into the record.

Exhibit "K".

Letter dated October 24, 1932, addressed to Arthur W. Cutten and signed by L. A. Fitz, Grain Exchange Supervisor, suspending reporting requirements in accordance with an order of the Secretary of Agriculture, effective with the opening of business October 24, 1932.

714 UNITED STATES OF AMERICA, Filed Feb. 12, 1935.

BEFORE THE COMMISSION CREATED BY THE GRAIN FUTURES ACT.

The Secretary of Agriculture, *Complainant,*
v.
Arthur W. Cutten, *Respondent.*
} Docket No. 7.

OPINION, FINDINGS OF FACT, CONCLUSION AND ORDER.

I. OPINION.

This proceeding was instituted by the Secretary of Agriculture on April 9, 1934, through the filing of a complaint requiring the respondent, Arthur W. Cutten, to show cause why an order should not be entered directing all contract markets to refuse him all trading privileges until further notice of the Commission created by the Grain Futures Act. The matter is now before this Commission for decision, having been submitted upon briefs and oral argument.

Summary of Complaint.

The complaint alleged, among other things, that respondent during 1930 and 1931, and at the time of filing the complaint, was a member of the Board of Trade of the City of Chicago

(hereinafter referred to as the Chicago Board of Trade); that the Chicago Board of Trade is a duly designated contract market; that during 1930 and 1931 respondent was required by regulations made pursuant to the Grain Futures Act
715 to report to the Grain Futures Administration his net position in wheat futures owned or controlled by him, long or short, when he had open commitments in any one wheat future equal to or in excess of 500,000 bushels, and also to report his daily trades in wheat futures in which he owned or controlled open commitments equal to or in excess of 500,000 bushels.

It was then alleged that during 1930 and 1931 respondent conspired with various persons and firms through whom he dealt to conceal his position and trades on the Chicago Board of Trade in an attempt to manipulate the price of grain; that he made false reports to the Grain Futures Administration; that he failed and refused to report his trades in wheat futures and his position in the market in violation of the Grain Futures Act and rules and regulations pursuant thereto; and that he caused the various firms and persons through whom he traded to keep false records, make false reports and to split and divide his account.

It is further alleged that during 1930 and 1931 respondent sold wheat futures in excess of 100,000,000 bushels; that he sold wheat futures short in 1930 in excess of 37,000,000 bushels and in 1931 in excess of 36,000,000 bushels; that he attained a maximum short position in wheat futures in 1930 of 7,525,000 bushels on June 24, and in 1931 a maximum short position of 6,770,000 bushels on April 10; that in 1930, during the time respondent had an open position on the market, he was short 79 percent of the time, and in 1931 he was short 89 percent of such time; and that during the two-year period covered by these operations the price of wheat declined more than 78 cents per bushel.

716 Many other detailed allegations were made with respect to the status of respondent's accounts on different dates, his failure to report, his rendition of inaccurate reports, etc., but the above summary generally states the gist of the charges.

Hearing Before Referee—Respondent's Motions.

No formal answer was filed, but at the opening of the hearing in Chicago before the referee on May 14, 1934, counsel for respondent made what in effect is a general denial of all the allegations of the complaint.

At that hearing, testimony was received from numerous witnesses called by the complainant and many documentary exhibits were put in evidence. Counsel for respondent cross-examined complainant's witnesses freely but offered no direct evidence on respondent's behalf. A motion to quash the complaint had been made at the opening of the hearing. At the conclusion of the hearing respondent made motions (1) to strike out complainant's evidence, (2) to quash the complaint and (3) to dismiss the complaint. These motions were made part of the record by agreement.

The motion to quash the complaint, as made at the conclusion of the hearing, is principally relied upon by respondent. This motion is based upon the following propositions:

1. That the sections of the Grain Futures Act of 1922 under which these proceedings are brought, infringe the Constitution of the United States in the following respects.

(a) That they deprive the respondent of his constitutional right to trial by jury.

(b) That they are in violation of the Fifth Amendment to the Constitution in that they deprive a citizen of liberty and property without due process of law.

717 (c) That they are in violation of Article III of the Constitution in that they confer upon a commission created solely for administrative purposes, powers and functions which are reposed in and are expressly reserved for the judiciary.

(d) That they constitute an unwarranted delegation of legislative power which by the Constitution is reposed in and expressly reserved for the Congress of the United States.

2. That the provisions of the Grain Futures Act of 1922, under the authority of which said complaint has been instituted, were intended to be regulatory, remedial and preventive; that said complaint does not seek to remedy, regulate or curtail an existing violation, nor is it filed in connection with an attempt by the Secretary of Agriculture to curtail or police an existing violation, but contrariwise, seeks to punish respondent for alleged past violations.

3. That the regulation with respect to which violations are charged was rescinded under date of October 24, 1932, and there being then pending against respondent no proceeding of any kind or character, this Commission is

now without power or authority in law to institute these proceedings and to punish respondent for violations alleged to have occurred prior to October 24, 1932.

The third main proposition in the above motion was not pressed by respondent's counsel in the brief or in oral argument, but the first two propositions were urged upon this Commission as grounds for disposition of this case. These will be considered in connection with the constitutionality and construction of the Act. Since in respondent's argument, the question of constitutionality is made to depend upon construction, the latter will be discussed first.

Construction of the Statute.

Section 6(b) of the Act provides:

718 If the Secretary of Agriculture has reason to believe that any person is violating any of the provisions of this Act, or is attempting to manipulate the market price of any grain in violation of the provisions of section 5 hereof, or of any of the rules or regulations made pursuant to its requirements, he may serve upon such person a complaint stating his charge in that respect, to which complaint shall be attached or contained therein a notice of hearing specifying a day and place not less than three days after the service thereof, requiring such person to show cause why an order should not be made directing that all contract markets until further notice of the said commission refuse all trading privileges thereon to such person. Said hearing may be held in Washington, District of Columbia, or elsewhere, before the said commission, or before a referee designated by the Secretary of Agriculture, who shall cause all evidence to be reduced to writing and forthwith transmit the same to the Secretary of Agriculture as chairman of the said commission. That for the purpose of securing effective enforcement of the provisions of this Act the provisions, including penalties, of section 12 of the Interstate Commerce Act, as amended, relating to the attendance and testimony of witnesses, the production of documentary evidence, and the immunity of witnesses, are made applicable to the power, jurisdiction, and authority of the Secretary of Agriculture, the said commission, or said referee in proceedings under this Act, and to persons subject to its provisions. Upon evidence received the said commission may require all contract markets to refuse such persons all trading

privileges thereon for such period as may be specified in said order. Notice of such order shall be sent forthwith by registered mail to delivered to the offending person and to the governing boards of said contract markets. After the issuance of the order by the commission, as aforesaid, the person against whom it is issued may obtain a review of such order or such other esuitable relief as to the court may seem just by filing in the United States circuit court of appeals of the circuit in which the petitioner is doing business a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission by delivering such copy to its chairman or to any member thereof, and thereupon the commission shall
719 forthwith certify and file in the court a transcript of the record theretofore made, including evidence received. Upon the filing of the transcript the court shall have jurdisdiction to affirm, to set aside, or modify the order of the commission, and the findings of the commission as to the facts, if supported by the weight of evidence, shall in like manner be conclusive.

Respondent contends that the above section authorizes summary proceedings only to frustrate or restrain existing violations. This contention is based primarily upon the use of the present tense in the statute specifying conduct warranting the filing of a complaint by the Secretary of Agriculture. The Act provides that proceedings may be begun by the Secretary of Agriculture if he has reason to believe any person "is violating" the Act or regulations, etc., or "is attempting to manipulate the market price of grain", etc. Respondent contends that the Secretary of Agriculture has no legal authority to institute proceedings under the Act where violations are successfully consummated.

The Grain Futures Act and the rules and regulations made pursuant thereto require members of contract markets both to keep and make reports. The Act and regulations further provide that a failure to make reports or the making of false reports by a member first, subjects the contract market, of which such person is a member, to an order directing it to refuse him trading privileges thereon, and, second, subjects the offending member to a loss of trading privileges on all contract markets.

The respondent is charged with attempting to manipulate the market price of grain and in the furtherance of such at-

tempt concealing his transactions by making false reports and failing to make reports.

720 Respondent's contention as to the proper construction of the statute with respect to the legal authority of the Secretary of Agriculture to institute this proceeding should be analyzed in connection with the nature of the thing forbidden in the Act.

If the construction contended for by respondent is correct then the authority conferred on this Commission by Section 6 (b) would be meaningless as to violations of reporting requirements. This follows from the very nature of reporting. Should a member on a certain day reach a reportable position and fail to report it at the end of that day such failure immediately becomes a past violation. No amount of vigilance could detect the failure of one to report before it happened. Once it happens then it is in the past. Should one render a false report it immediately becomes a completed wrongful act. That one intends to render a false report cannot reasonably be ascertained in advance. That one has made a false report cannot be determined until he submits a report which is in fact false. Should one attempt to manipulate the market price of grain by concealing his transactions in many accounts through various grain firms in order to build up large holdings his ownership and control of the many concealed accounts could not possibly be determined until long after the transactions had occurred. Hence, it follows that if the statute in question is given such a narrow meaning as to preclude proceedings with respect to violations technically completed it would, indeed, be a futile statute.

The reporting requirements have been judicially noticed to be vital and necessary to the accomplishment of the Act's purpose to put an end to price manipulation. *Bartlett-*

721 *Frazier Co. et al.* v. *Hyde et al.*, 65 Fed. (2d) 350. The construction contended for by respondent would therefore nullify the accomplishment of the purpose of the Act.

Acts of Congress are not to be given a meaning which results in absurd or impractical consequence or which nullifies the legislative intent. *Church of the Holy Trinity* v. *United States*, 143 U. S. 457; *Silver* v. *Ladd*, 7 Wall. 219; *United States* v. *Ryan*, 284 U. S. 167, 175; *Gulf States Steel Co.* v. *United States*, 287 U. S. 32, 45; *Sorrells* v. *United States*, 287 U. S. 435; *Helvering* v. *Stockholms' Enskilda Bank*, 293 U. S. 84.

In view of the manifest purpose of the Act, this Commis-

sion cannot believe that Congress intended to nullify the enforcement powers contained in Section 6 (b) by the use of the word "is". In statutory construction the word "is" may denote the past or future as well as the present, depending upon the context and the legislative intent. It is the view of this Commission that Section 6 (b) is not restricted to a present tense application.

Other reasons for taking this view of the authority conferred by Section 6 (b) were advanced by this Commission in the recent case of *The Secretary of Agriculture* v. *Ettinger & Brand*, Docket No. 6. In the opinion rendered in that case this Commission said:

> Respondents further contend that this Commission has no authority under section 6(b) of the Act to take any action with respect to a past violation; that the language of that section is in the present tense; and that the Commission has no power to act unless at the very time of the proceeding the respondent "is violating any provision of the Act or is attempting" to manipulate the market price of grain.
>
> The construction of the statute for which respondents contend would render the law wholly ineffectual. It
> 722 would mean that unless an order directing contract markets to deny trading privileges to parties guilty of violating the Act or of manipulating prices were entered while the violation, or acts of manipulation, were being presently committed, no such order could be entered at all. Such a construction of the statute would lead to absurd consequences which it cannot lightly be assumed Congress intended.
>
> Moreover, it is to be noticed that the Act provides for notice and hearing preceding the denial of contract market trading privileges. At least three days' notice of hearing is required. Authority is granted to designate a referee to hold hearings. Hearings may be held in the District of Columbia or elsewhere. The evidence must be reduced to writing and transmitted to the Secretary of Agriculture. The matter must finally be considered before the full Commission consisting of three members of the President's cabinet. The above procedure is prescribed by the Act and must be observed. But if the statute is to be given the meaning for which respondents contend, the above procedure would be ineffectual, as summary procedure would be required if anything at all

were to be accomplished. Plainly, the procedure prescribed is wholly inconsistent with the contention of respondents that the Commission lacks power to enter orders with respect to violations or attempts to manipulate prices which have been completed. If the jurisdiction of this Commission to enter an order under section 6 (b) of the Act were dependent upon final action sufficiently prompt to affect the guilty party before his violation is completed, it would be utterly impossible to observe the procedural requirements which the law has provided. This Commission ought not to construe this statute, which authorizes proceedings against grain exchange members for violations of the Act and for attempting to manipulate prices, in a way which is inconsistent with the procedure set up in the Act, nor should the Act be given a construction which would nullify the legislative intent. The legislative history of the Grain Futures Act has been studied and this Commission is convinced that the construction of section 6 (b) for which respondents contend is not warranted.

The above reasoning is applicable to the present case and is now reaffirmed.

723 Because certain arguments based upon the legislative history of the Act were made in this case which were not made in the Ettinger & Brand case, that history has been reexamined. Nothing is found, however, which alters the Commission's belief that Congress did not restrict enforcement powers to summary proceedings involving only incompleted violations of the law or regulations, or present attempts to manipulate grain prices.

Constitutionality of the Statute as Construed.

Respondent challenges the constitutionality of this Act as construed by this Commission, asserting that the statute as construed (1) violates the right of respondent to a jury trial, (2) constitutes an unlawful delegation of judicial power to an administrative tribunal, and (3) deprives respondent of property without due process of law in that the trial is heard by a commission, one of whose members is the complainant.

The first contention is fully answered by the opinion of a specially constituted three-judge District Court in the Eastern District of Illinois, in the case of *Farmers Livestock Commission Co.* v. *United States*, 54 Fed. (2d) 375, disposing of a similar attack upon the validity of an order of the Secretary

of Agriculture under the Packers and Stockyards Act. In that case the Court said (at page 378):

> The authorized suspension for violation of the act, without a jury trial is not in conflict with the Sixth and Seventh Amendments to the Constitution. The guarantee of right of trial by jury does not apply to civil actions for the recovery of penalties (*Oceanic Steam Navigating Company* v. *Stranahan*, 214 U. S. 320, 29, S. Ct. 671, 53 L. Ed. 1013; *Hepner* v. *U. S.*, 213 U. S. 103, 29 S. Ct. 474, 53 L. Ed. 720, 27 L. R. A. [N. S.] 739, 16
724 Ann. Cas. 960), or to contempt proceedings for violation of an injunction (*In re Debs*, 158 U. S. 564, 15 S. Ct. 900, 39 L. Ed. 1092). Such guarantee under the Seventh Amendment applies only to suits of such character as were maintainable at common law at the time the amendment was adopted, and, under the Sixth Amendment, only to proceedings technically criminal in character. *Capital Traction Company* v. *Hof*, 174 U. S. 1, 19 S. Ct. 580, 43 L. Ed. 873; *Shields* v. *Thomas*, 59 U. S. (18 How.) 253, 15 L. Ed. 368; *U. S.* v. *Zucker*, 161 U. S. 475, 16 S. Ct. 641, 40 L. Ed. 777. The withdrawal of a license or suspension from registration is merely the withdrawal of a government permit to engage in a business in which the licensee has no inherent right to engage, but in which he may participate only upon compliance with the conditions imposed by the government. If the government has the right to supervise the business, it may fix the conditions upon which parties may engage therein, and may, without the intervention of a jury, withdraw such permission when satisfied that the conditions are being violated. *Hall* v. *Geiger-Jones Co.*, 242 U. S. 539, 37 S. Ct. 217, 61 L. Ed. 480, L. R. A. 1917F, 514 Ann. Cas. 1917C, 643.

The Circuit Court of Appeals for the Seventh Circuit also rejected this contention in *Board of Trade of the City of Chicago* v. *Wallace et al.*, 67 Fed. (2d) 402. In that case Section 6 (a) of the Grain Futures Act was challenged on similar grounds. The Court said (at page 407):

> Appellant raises the contention that paragraph (a) of section 6 of the Grain Futures Act, which authorizes suspension by the statutory commission of a contract market designation, in case the designatee transgresses the act, is unconstitutional because such a proceeding "is essentially criminal" and is in derogation of section 2 of

article 3 of the Constitution, which provides that trial of crimes shall be by jury.

The promise that this is in essence a criminal proceeding rests wholly in assertion; no authority is cited in support. We see nothing of criminal nature in a proceeding for the revocation of a license or permit or designation granted under the authority of a statute which also authorizes revocation in case the grantee transgresses the statute.

725 The second contention with respect to delegation of judicial power to an administrative tribunal is also answered in *Board of Trade of the City of Chicago* v. *Wallace, et al., supra.* In that case the similar delegation of power made to this Commission by Section 6 (a) of the Grain Futures Act was challenged on constitutional grounds. The Court, however, upheld the Act as against such attack, saying (at page 407):

> Granted the constitutional power to designate boards of trade as contract markets upon application by the boards, we perceive no reason why Congress might not properly lodge with some instrumentality the power to suspend or revoke such designation upon sufficient cause, first according reasonable opportunity for defending against any charge, as well as for judicial review of any suspending order. The statute provides for notice and hearing, before the commission, and for appeal from its order to the Circuit Court of Appeals within specified time upon giving bond for costs, and that pending decision of the appeal the order of the Commission shall not be effective.

As for the third objection to the effect that it is a denial of due process of law to require respondent to be heard by a Commission one of whose members is the complainant, it is observed that the same point was raised in *Farmers' Livestock Commission Co.* v. *United States, supra.* In that case the Court ruled against such contention, saying (at page 381-382):

> Plaintiffs complain that the Secretary occupies a dual capacity as prosecutor and judge. As stated by another court, this criticism is "too unsubstantial to justify discussion." *National Harness Manufacturers' Association* v. *Federal Trade Commission* (C. C. A.), 268 F. 705, 707. This rule follows from the promise that a regulatory commission must investigate and ascertain the facts necessary to the proper performance of its regulatory

or administrative duty. Private parties may make complant, but if such parties are not sufficiently interested to
726 complain, or refrain from so doing because to do so would be against their own interest, the protection of the public's interest demands that the commission be so empowered and equipped as to be able to assure that the real facts will be produced. Such function is no bar to fair judicial ruling upon those facts; rather, such powers and equipment tend to procure the more efficient, just, and impartial discharge of the regulatory powers of the office.

This Commission does not agree with respondent's contentions that the Act would be unconstitutional as it is construed in this opinion and as it has been construed in the Ettinger & Brand case.

Ruling on the Motions.

It is concluded that the complaint states an offense within the Act, that the Act construed to cover such offense is constitutional, and that this Commission has jurisdiction. The motions to quash and to dismiss are denied.

The motion to strike complainant's evidence is also denied. It is unnecessary to go into a discussion of the grounds of this motion, some of which relate to respondent's construction of the Act and others to alleged inadmissibility of evidence offered under the issues raised by the complaint. Technical rules of evidence do not apply in a proceeding of this kind, and respondent has not been prejudiced by the reception of any evidence which might not have been technically admissible in a court proceeding.

The Evidence.

It is believed that the essential allegations of the complaint have been abundantly proved.

727 During the years 1930 and 1931 the Secretary of Agriculture, pursuant to authority granted by the Grain Futures Act, required members of contract markets to report their net positions in wheat futures owned and controlled by them in which they had open commitments in any one future equal to or in excess of 500,000 bushels, and their daily trades in a wheat future in which they owned or controlled open commitments equal to or in excess of 500,000 bushels. These reporting requirements had been in effect since 1926, except for an interval of several months in 1927, when they were temporarily suspended.

There can be no doubt on the record that respondent was fully aware of the reporting requirements. During 1926, 1927 and 1928 he made reports. He had been specifically instructed as to the manner of rendering reports. Blanks had been furnished him which in the earlier years of reporting he had used. During 1926, 1927 and 1928 he complied with the requirements in a way which clearly indicates he knew what was expected of him.

But in 1930 respondent rendered no reports at all, although the open commitments in wheat futures owned and controlled by him were so large on approximately 130 days during that year as to make him subject to the reporting requirements. On practically all of those days he also had trades in a single wheat future in which he had open contracts equal to or in excess of 500,000 bushels. His trading during this period was enormous. For example, on June 23, 1930, he was short 3,675,000 bushels of September wheat. This was carried with seven firms in ten accounts. On the same date he was short 3,450,000 bushels of December wheat which was carried in eleven accounts with five firms. On June 24, 1930, his ac-
728 counts combined to reach a total short position of 7,725,-000 bushels. During 1930 he was short 79 percent of the time.

In 1931 he made irregular reports but the records show they were false. An analysis of all the reports rendered by respondent in 1931 has been made from exhibits introduced at the hearing. This analysis shows that on each day as to which reports were made respondent had other open commitments which he did not report. The open commitments not reported were generally much larger than those that were reported, and they were almost always on the short side. During 1931 he was short 89% of the time. For example, on March 18, 1931, respondent made a written report to the Grain Futures Administration that he was long 440,000 bushels of May oats. He reported no wheat on that day. In accounts definitely identified as his, he was in fact on that day short 4,095,000 bushels of wheat.

In addition to the false reports rendered in 1931, there were many days when respondent's open commitments in a single wheat future equaled or exceeded 500,000 bushels, although no reports were made. On most of these days respondent traded in the wheat future in which he had such open commitments. There were approximately 110 days in 1931 when this was true. Thus, on April 10, 1931, respondent made no report

whatsoever, although on that day he was short in accounts definitely identified as his 3,270,000 bushels of September wheat and 2,925,000 of July wheat. This example is typical.

Respondent disclaims personal responsibility, claiming that the violation of the reporting requirements was the fault of an office assistant. The Commission is not impressed with
729 this explanation. The record does not support it, and it is inconsistent with other phases of respondent's conduct, presently to be discussed, which indicate a deliberate attempt to conceal his market position. Moreover, Section 2 of the Grain Futures Act expressly makes members responsible for the acts of their agents, and in any event it seems that general rules of agency should apply.

There are certain facts which seem quite incompatible with innocent intent. A study of respondent's accounts can hardly lead to any other conclusion that that he deliberately conducted his business so that his true position on the market would not be apparent and so that he could evade the reporting requirements without detection. He split his trades into 35 accounts which he carried with eight firms. Many of the 35 accounts involved were unquestionably those of the respondent. Seventeen of them were definitely identified as his by the various firms with which they were carried. The evidence abundantly establishes his control of the others. Considering only those accounts admittedly and indisputably his there were many days during the years 1930 and 1931 on which he failed to report his trades and transactions in such accounts as he was required to do by the Act and the regulations made pursuant thereto. Again considering only those accounts definitely belonging to the respondent, each report made by him during the year 1931 was false and untrue. The evidence would seem to justify the conclusion that he owned all of the accounts. The purchases and sales in such accounts were directed by respondent and were allocated to the various accounts in such a manner as to keep each account under 500,000 bushels. Time after time he would build up an account to 490,000 bushels or 495,000 bushels and then
730 avoid further trading in that account, and on other occasions would cause transactions to be shifted from one account to another with the effect of keeping the accounts under 500,000 bushels.

In the absence of explanation or suggestion of some other motive the conclusion is irresistible that respondent operated according to a well defined plan to conceal his position.

The failure to report, rendition of false reports and the manner in which respondent split up his accounts indicate an attempt to manipulate the price of wheat. Respondent, through his vast holdings in the market, was in a position to effect sudden price fluctuations which he could use to his financial advantage. No other explanation has been offered as to his manner of dealing. Respondent is not charged with having manipulated prices and the proof does not establish that he caused the decline of 78 cents per bushel in the price of wheat which occurred between January 2, 1930, and December 31, 1931. But this Commission does not believe that respondent's course of trading during the two years in question was purposeless, and the evidence as a whole leads this Commission inescapably to the conclusion that respondent was attempting to manipulate the price of wheat.

II. Findings of Fact.

The Commission having duly considered the evidence and the arguments and briefs of counsel now makes the following findings of fact:

1. The Chicago Board of Trade was duly designated as a contract market under the Grain Futures Act on May 3, 1923, and it has been a contract market continuously since that date.

731 2. During the years 1930 and 1931 respondent was, and now is, a member of the Chicago Board of Trade.

3. From and after October 31, 1927, through and including the year 1931, members of contract markets were required by regulations made pursuant to the Grain Futures Act to report to the Grain Futures Administration their net position in futures owned or controlled by them, long or short, by grain and by future, when they had net open commitments in any one future equal to or in excess of 500,000 bushels of wheat, corn or oats, and 200,000 bushels of rye or barley.

4. Respondent in 1930 and 1931 had knowledge of the reporting requirements.

5. Respondent, in 1930 and 1931, transacted his business through eight commission firms. He split his trade into 35 accounts. He carried some of his accounts in the names of relatives and associates. Respondent owned or controlled each of the 35 accounts.

6. During the year 1930, respondent did not make any reports to the Grain Futures Administration.

7. On approximately 130 days during 1930, respondent had open commitments in a single wheat future in accounts owned and controlled by him equal to or in excess of 500,000 bushels.

8. On approximately 119 days during 1930, respondent had trades in a single wheat future in accounts owned and controlled by him in which he had open commitments equal to or in excess of 500,000 bushels.

9. During the year 1931, respondent made reports irregularly to the Grain Futures Administration, none of which was true or correct as a statement of his net position on the market on the day covered by such report.

732 10. During the year 1931, there were a great many days on which respondent made no reports at all, although having on such days open commitments in a single wheat future, in accounts owned and controlled by him, equal to or in excess of 500,000 bushels.

11. On approximately 110 days during 1931, respondent had trades in a single wheat future in accounts owned and controlled by him, in which he had open commitments equal to or in excess of 500,000 bushels.

12. On many days during the years 1930 and 1931, the respondent, in accounts definitely identified as belonging to him, had open commitments and trades which he failed to report as required by the Act and regulations made pursuant thereto.

13. During the year 1931, the respondent made false reports of his open commitments and transactions in accounts definitely identified as his and indisputably belonging to him contrary to the Act and regulations made pursuant thereto.

14. Respondent's purpose in concealing his position in the market was to manipulate the price of grain and thereby to make large profits. He systematically allocated purchases and sales of wheat futures to the various accounts in order to keep them under 500,000 bushels, and thus to avoid detection. He attempted to manipulate the price of grain.

III. Conclusion.

Respondent's conduct as shown by the record constitutes a violation of the Grain Futures Act, and the Rules and Regulations made pursuant thereto.

733 It is the conclusion of this Commission that an order should be entered directing all contract markets to refuse all trading privileges thereon to respondent for a period of two years from March 1, 1935.

IV. Order.

Entered Feb. 12, 1935.

Accordingly, It Is Hereby Ordered that all contract markets refuse all trading privileges thereon to Arthur W. Cutten for a period of two years from March 1, 1935.

It Is Ordered, that a copy of this Opinion, Findings of Fact, Conclusion and Order be transmitted by registered mail to the respondent and to the Secretary of each board of trade which is now operating as a contract market under a designation as such heretofore made by the Secretary of Agriculture.

In Witness Hereof, the Secretary of Agriculture, the Attorney General, and the Secretary of Commerce, sitting as a Commission pursuant to section 6 of the Grain Futures Act, 1922, have hereunto set their hands this 12th day of February, 1935.

(S) H. A. WALLACE
Secretary of Agriculture, Chairman.

(S) HOMER CUMMINGS
Attorney General.

(S) DANIEL C. ROPER
Secretary of Commerce.

734 IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Arthur W. Cutten,
Appellant,
vs.
Henry A. Wallace, Secretary of Agriculture, Homer Cummings, Attorney General, and Daniel C. Roper, Secretary of Commerce, sitting as a Commission under the Grain Futures Act,
Appellees.
No. 5467.

CERTIFICATE OF THE COMMISSION SITTING PURSUANT TO GRAIN FUTURES ACT.

To the Honorable, the United States Circuit Court of Appeals for the Seventh Circuit:

Pursuant to Section 6 (b) of the Grain Futures Act (7 U. S. C. Section 9), the undersigned members of the Commission, created thereby, do certify hereby that the documents and writings annexed hereto include a full and accurate transcript of the record of the proceedings had before said Commission, entitled "The Secretary of Agriculture *v.* Arthur W. Cutten", copy of the pleadings, evidence and order of the Commission. Completely enumerated said documents and writings are as follows:

(1) Complaint and Notice of Hearing.

(2) Respondent's Motion to Dismiss Complaint, and Motion to Quash Complaint.

(3) Transcript of Evidence, consisting of 964 pages.

735 (4) Complainant's exhibits numbered 1 to 418, inclusive, and Respondent's exhibits lettered A to K, inclusive, with the exception of certain exhibits not offered as listed in index to the transcript or read in the record or summarized in the abstract of evidence.

(5) Abstract of the Evidence.

(6) Briefs submitted to the Commission.

(7) Copy of Commission's Opinion, Findings of Fact, Conclusion and Order dated February 12, 1935.

In Testimony Whereof, the members of the Commission have hereunto set their hands in the City of Washington, District of Columbia, this 7th day of March, 1935.

HENRY A. WALLACE
Secretary of Agriculture.
DANIEL C. ROPER
Secretary of Commerce.
HOMER CUMMINGS
Attorney General.
Members of the Commission.

Filed Apr. 1, 1935.

736 IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Arthur W. Cutten, *Appellant,* *vs.* Henry A. Wallace, Secretary of Agriculture, and Henry A. Wallace, Secretary of Agriculture, Homer Cummings, Attorney General, and Daniel C. Roper, Secretary of Commerce, sitting as a Commission under The Grain Futures Act, *Appellees.*	No. 5467. Petition for Review of Order entered by Commission under The Grain Futures Act.

STIPULATION WITH RESPECT TO PRINTING OF RECORD.

For as much as the complete record of the above entitled cause is voluminous in character, contains many large and bulky exhibits, and the parties hereto desire to simplify the preparation of the record in order to facilitate the review thereof by the Judges of the Circuit Court of Appeals, Therefore, It Is Hereby Stipulated by and between the respective parties, by their respective attorneys, that the Clerk of the Circuit Court of Appeals for the Seventh Circuit in preparing and printing the transcript of the record for the

use of this court in this review shall print only the following documents, in the following order:

First: Order allowing review.

Second: Appellant's petition for review and assignments of error.

Third: Abstract of testimony as prepared by counsel for the Secretary of Agriculture, filed with the Commission,
737 returned with the record, and marked "Part 1, pp. 1(30)-370(398), inclusive" with the exception that all underlining shall be omitted.

(Note: Since the above-mentioned abstract contains copies of the complaint, the testimony in narrative form, and certain motions of appellant filed with the Commission, the clerk is authorized to print said Part 1 in full.)

Fourth: Pages 524(552) to 602(662) of the Digest of Exhibits prepared by counsel for the Secretary of Agriculture filed with the Commission, returned with the Record, and marked "Abstract of Record, Part II".

Fifth: Abstract of exhibits "attached to this stipulation and marked Exhibit A".

Sixth: Opinion, findings of fact, conclusion, and order of the Commission.

Seventh: Certificate of the Commission certifying to the record in the above entitled cause and dated March 7, 1935.

Eighth: Stipulation respecting printing of record.

It Is Further Stipulated, that since a preponderance of the exhibits received in evidence by the referee for the Commission are reports, pages from ledgers, and other documents tabular and columnar in nature, and the printing thereof would extend the printed transcript of record beyond and real necessity therefor and would be a burden upon the court, therefore (a) the said exhibits need not be printed as part of the printed transcript of the record but shall be abstracted as appears in Exhibit "A" attached hereto (which the Clerk shall use), (b) the parties hereto may refer to any part
738 of the record although such part has not been printed where it is considered that such non-printed part is material, and (c) if the same be deemed necessary to a full and fair presentation of the respective argument employed by a party, such party may refer to any particular exhibit in his brief and may set the same out in full in the margin of the pages thereof.

It Is Further Stipulated, that the appellant may, on or be-

fore the 15th day of April, 1935, file additional assignments of error.

ORVILLE J. TAYLOR
JAMES J. MAGNER
For Appellant.
WENDELL BERGE
LEO F. TIERNEY
For Appellees.

739 EXHIBIT "A".

Printed as Ex. A, p. 420 Printed Record.

763 Endorsed: No. 5467 Petition for Review of Order entered by Commission under The Grain Futures Act In the United States Circuit Court of Appeals for the Seventh Circuit Arthur W. Cutten, Appellant, vs. Henry A. Wallace, Secretary of Agriculture, and Henry A. Wallace, Secretary of Agriculture, Homer Cummings, Attorney General, and Daniel C. Roper, Secretary of Commerce, sitting as a Commission under The Grain Futures Act, Appellees. Stipulation with Respect to Printing of Record Filed Apr 1, 1935 Frederick G. Campbell, Clerk. Orville J. Taylor, James J. Magner.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

Filed Apr. 15, 1935.

For the Seventh Circuit.

Arthur W. Cutten,
Appellant,
vs.
Henry A. Wallace, Secretary of Agriculture, and Henry A. Wallace, Secretary of Agriculture, Homer Cummings, Attorney General, and Daniel C. Roper, Secretary of Commerce, sitting as a Commission under the Grain Futures Act,
Appellees.
No. 5467.

ADDITIONAL ASSIGNMENTS OF ERROR.

In accordance with the order of this Court entered April 1, 1935, Arthur W. Cutten, appellant, assigns additional errors to those already assigned in his petition *for review of* the order of the Commission hereinbefore filed herein as follows:

(dd) The Commission erred in construing Section 6 (b) of the Grain Futures Act of 1922.

(ee) The Commission erred in finding that the appellant failed to file reports and filed false reports in an attempt to manipulate the market price of grain.

(ff) Section 6 (b) of the Grain Futures Act of 1922 as construed by said order of the Commission violates due process of law and infringes the Constitution of the United States in that it attempts to make an unlawful delegation of legislative power to members of the Executive Department of the Government and to others in no way connected with the Government in violation of said Constitution and particularly Section 1 of Article I thereof and the Fifth Amendment thereto.

(gg) Section 6 (b) of the Grain Futures Act of 1922 violates the Constitution of the United States in that it attempts to make an unlawful delegation of legislative power to members of the Executive Department of the Government and to others in no way connected with the Government in violation

of said Constitution and particularly Section 1 of Article I thereof and the Fifth Amendment thereto.

(hh) Section 6 (b) of the Grain Futures Act of 1922 violates the Constitution of the United States in that said Section is not within the power of Congress under the Commerce or any other clause of said Constitution, and is in violation of the Tenth Amendment to said Constitution which reserves to States, respectively, or to the people thereof, all powers not delegated to the United States by said Constitution.

(ii) The method of judicial review of an order of the Commission provided in Section 6 (b) of the Grain Futures Act of 1922 violates the Constitution of the United States and does not constitute due process of law.

(jj) Section 6 (b) of the Grain Futures Act of 1922 violates the Constitution of the United States in that it authorizes the Commission to enter an order suspending the person proceeded against for such period of time as the Commission may determine and therefore purports to authorize a permanent suspension, and this provision is unreasonable and does not constitute due process of law within the Fifth Amendment thereto and authorizes the imposition of excessive and unusual punishment in violation of said Constitution.

(kk) Section 6 (b) of the Grain Futures Act of 1922 is so vague, indefinite and uncertain that it cannot have the effect of law within the meaning of the Constitution of the United States and, particularly the Fifth Amendment thereto in that the term attempt to "manipulate" is a generic term having a great variety of meanings.

(ll) Section 6 (b) of the Grain Futures Act of 1922 as construed by said order of said Commission as authorizing proceedings which are in effect criminal and would impose upon the appellant irreparable injury and heavy penalties, violates the Sixth Amendment to the Constitution of the United States because said Section of said Act and the complaint instituted in pursuance thereof are vague, uncertain and indefinite and do not inform the appellant of the nature and cause of the accusation against him, and said provision does not afford the appellant a jury trial for the alleged violations of the provisions of said Act.

(mm) Section 6 (b) of the Grain Futures Act of 1922, in that it purports to authorize proceedings which are in effect criminal and would impose upon the appellant irreparable injury and heavy penalties, violates the Sixth Amend-

ment to the Constitution of the United States because said Section of said Act and the complaint instituted in pursuance thereof are vague, uncertain and indefinite and do not inform the appellant of the nature and cause of the accusation against him, and said provision does not afford the appellant a jury trial for the alleged violations of the provisions of said Act.

Dated, the 15th day of April, A. D. 1935.

ORVILLE J. TAYLOR,
JAMES J. MAGNER,
Attorneys for Petitioner and Appellant.
231 S. La Salle St., Chicago, Illinois.

State of Illinois, } ss.
County of Cook. }

JAMES J. MAGNER, being duly sworn on oath, deposes and says that he is one of the attorneys for appellant (and petitioner) in this cause; that affiant served the above and foregoing additional assignments of error on appellees by depositing in the United States mail at Chicago, Illinois, at 4:10 o'clock, P. M., this 15th day of April, A. D. 1935, a copy thereof duly enclosed in an envelope with the proper stamps and addressed to Wendell Berge, Special Assistant to Attorney General, Department of Justice, Washington, D. C., counsel for appellees.

JAMES J. MAGNER.

Subscribed and sworn to before me this 15th day of April, A. D. 1935.

MARGARET MCALOON,
(Seal) *Notary Public.*

(Endorsed) No. 5467 In the United States Circuit Court of Appeals For the Seventh Circuit Arthur W. Cutten, Appellant, *vs.* Henry A. Wallace, Secretary of Agriculture, and Henry A. Wallace, Secretary of Agriculture, Homer Cummings, Attorney General, and Daniel C. Roper, Secretary of Commerce, sitting as a Commission under the Grain Futures Act, Appellees. Additional Assignments of Error Filed Apr 15, 1935 Frederick G. Campbell, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 473, inclusive, contain a true copy of the Printed Record of proceedings before the Commission under The Grain Futures Act, including the following proceedings had and papers filed in this court:

Order of February 28, 1935, granting leave to file petition,

Petition for review and assignment of errors, filed February 28, 1935,

Stipulation regarding printing of record with Exhibit A—Abstract of Exhibits attached thereto, filed April 1, 1935, and

Additional Assignment of Errors, filed April 15, 1935.

This record was printed under my supervision and filed on the 19th day of April 1935 and is the record on which the following-entitled cause was heard and determined: Arthur W. Cutten, Petitioner vs. Henry A. Wallace, Secretary of Agriculture, and Henry A. Wallace, Secretary of Agriculture, Homer Cummings, Attorney General, and Daniel C. Roper, Secretary of Commerce, sitting as a Commission Under the Grain Futures Act, Respondents. No. 5467, October Term, 1935, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 9th day of December, A. D. 1935.

[SEAL]

FREDERICK G. CAMPBELL,
Clerk of the United States Circuit of Appeals for the Seventh Circuit.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court room, in the City of Chicago, in said Seventh Circuit on the second day of October 1934 of the October Term in the year of our Lord One Thousand Nine Hundred and Thirty-Four, and of our Independence the One Hundred and Fifty-Ninth.

5467

ARTHUR W. CUTTEN

vs.

HENRY A. WALLACE, SECRETARY OF AGRICULTURE, AND HENRY A. Wallace, Secretary of Agriculture, Homer Cummings, Attorney General, and Daniel C. Roper, Secretary of Commerce, Sitting as a Commission Under The Grain Futures Act

36900—35

Petition for Review of Order of Commission Under The Grain Futures Act

And on, to wit: On the twenty-eighth day of February 1935 an order granting leave to file petition for review of order of Commission under The Grain Futures Act, was entered by this court, which said order is not copied here, as the same appears on pages 1 and 2 of the printed record in this cause certified herewith.

And on the same day, to wit: On the twenty-eighth day of February there was filed in the office of the Clerk of this court a petition for review of order of Commission, and assignment of errors, which said petition and assignment of errors are not copied here as the same appear on pages 2 to 10, inclusive, of the printed record in this cause certified herewith.

And on the same day, to wit: On the twenty-eighth day of February 1935 there was filed in the office of the Clerk of this court a radiogram, which said radiogram is in the words and figures following, to wit:

[Radiogram]

Washington, D. C.,
84 Govt 27 2:56 P. M.

ORVILLE J. TAYLOR,
Continental Ills. Bank Bldg.,
231 S. LaSalle Street, Chicago.
(Via R. C. A.)

Chicago (via R. C. A.)

Copy of proposed cutter petition and order received Stop Appellees will consent to form of order submitted by you upon condition that the following clause be appended to third paragraph on second page of order Quote Provided that if this appeal is finally dismissed the two year period specified in said order shall begin to run from the date of such dismissal on such other date thereafter as the court may direct Unquote Stop You may exhibit this telegram to Circuit Court of Appeals

Received at Field B'ldg., 114 W. Adams St., Chicago, at 1935 Feb. 27, P. M. 2:42, Standard Time. WKLFZ CYL97

SETH THOMAS
Solicitor Agriculture

(Endorsed:) Filed February 28, 1935, Frederick G. Campbell, Clerk.

And afterwards, to wit: On the first day of April 1935 there was filed in the office of the Clerk of this court a stipulation with respect to printing record with Exhibit A—Descriptive Abstract of Exhibits—attached thereto, which said stipulation and Exhibit A are not copied here as said stipulation appears on pages 468 to 470,

inclusive, of the printed record; said Exhibit A appears on pages 420 to 451, inclusive, of the printed record in this cause, certified herewith.

And on the same day, to wit: On the first day of April 1935 the following further proceedings were had and entered of record, to wit:

MONDAY, APRIL 1, 1935

Court met pursuant to adjournment and was opened by proclamation.

Present: Hon. Samuel Alschuler, Circuit Judge; Frederick G. Campbell, Clerk; William H. McDonnell, Marshal.

5467

ARTHUR W. CUTTEN

vs.

HENRY A. WALLACE, SECRETARY, ETC., ET AL.

Petition for Review of Order of Commission Under Grain Futures Act

Pursuant to a stipulation of the parties this day filed with this court, It is ordered, adjudged, and decreed as follows:

1. That the Clerk of this court, in preparing the printed transcript of the record for the review of the above-entitled cause, shall print only the following documents:

First. Order allowing review.

Second. Appellant's petition for review and assignments of error.

Third. Abstract of testimony as prepared by counsel for the Secretary of Agriculture, filed with the Commission, returned with the record, and marked "Part 1, pp. 1–370, inclusive" with the exception that all underlining shall be omitted.

(NOTE.—Since the above-mentioned abstract contains copies of the complaint, the testimony in narrative form, and certain motions of appellant filed with the Commission, the Clerk is authorized to print said Part 1 in full.)

Fourth. Pages 524 to 602 of the Digest of Exhibits prepared by counsel for the Secretary of Agriculture filed with the Commission, returned with the Record, and marked "Abstract of Record, Part II."

Fifth. Abstract of exhibits.

Sixth. Opinion, findings of fact, conclusion, and order of the Commission.

Seventh. Certificate of the Commission certifying to the record in the above-entitled cause and dated March 7, 1935.

Eighth. Stipulation respecting printing of record.

Ninth. Since it appears from the stipulation of the parties that a preponderance of the exhibits received in evidence by the referee for the Commission are reports and other documents tabular and

columnar in nature, and the printing thereof would extend the printed transcript of record beyond any real necessity therefor and would be a burden upon the court, the said exhibits, except as provided in paragraph fourth above, shall not be printed as part of the printed transcript of the record but shall be described as appears in an exhibit attached to the stipulation of the parties, and each party may refer to any particular exhibit in his brief and also may set the same out in full in the margin thereof, or in an appendix, if the same be deemed necessary to a full and fair presentation of the respective argument employed by such party.

2. That leave is given appellant to file additional and more specific assignments of error, if he shall be so advised, on or before the 15th day of April 1935.

And afterwards, to wit: On the fifteenth day of April 1935 there was filed in the office of the Clerk of this court additional assignments of error, which said additional assignments of error is not copied here, as the same appears on pages 471 to 473, inclusive, of the printed record in this cause, certified herewith.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court room, in the City of Chicago, in said Seventh Circuit on the first day of October 1935 of the October Term in the year of our Lord One Thousand Nine Hundred and Thirty-Five and of our Independence the One Hundred and Sixtieth.

And afterwards, to wit: On the twenty-ninth day of October 1935 the following further proceedings were had and entered of record, to wit:

TUESDAY OCTOBER 29, 1935

Court met pursuant to adjournment.

Before: Hon. Evan A. Evans, Circuit Judge; Hon. William M. Sparks, Circuit Judge; Hon. Robert C. Baltzell, District Judge.

5467

ARTHUR W. CUTTEN

vs.

HENRY A. WALLACE, SECRETARY OF AGRICULTURE, ET AL.

Petition for Review of Order of Commission Under Grain Futures Act

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral arguments by Mr. Orville J. Taylor and Mr. Francis X. Busch, counsel for petitioner, and by Mr. Wendell Berge, counsel for respondents, and the court having heard the same takes this matter under advisement.

And afterwards, to wit: On the twenty-fifth day of November 1935 there was filed in the office of the Clerk of this court the opinion of the court, which said opinion is in the words and figures following, to wit:

United States Circuit Court of Appeals for the Seventh Circuit

No. 5467. October Term, 1935, October Session, 1935

ARTHUR W. CUTTEN, PETITIONER

vs.

HENRY A. WALLACE, SECRETARY OF AGRICULTURE, AND HENRY A. Wallace, Secretary of Agriculture, Homer Cummings, Attorney General, and Daniel C. Roper, Secretary of Commerce, Sitting as a Commission Under The Grain Futures Act, Respondents

Petition for Review of Order of Commission Under the Grain Futures Act

November 25, 1935

Before EVANS and SPARKS, Circuit Judges, and BALTZELL, District Judge.

EVANS, Circuit Judge. This is a petition for review of the order of the commission (created under the Grain Futures Act) which directed that all contract markets refuse all trading privileges thereon to Arthur W. Cutten of Chicago for a period of two years from March 1, 1935.

Formal complaint against Cutten had been made April 9, 1934, wherein he was charged with various violations of the Act enacted September 21, 1922, commonly known as the Grain Futures Act. A hearing was had before a commission consisting of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General. Upon the testimony taken, the commission made findings of fact from which we quote the following:

"1. The Chicago Board of Trade was duly designated as a contract market under the Grain Futures Act on May 3, 1923, and it has been a contract market continuously since that date.

"2. During the years 1930 and 1931 respondent was, and now is, a member of the Chicago Board of Trade.

"3. From and after October 31, 1927, through and including the year 1931, members of contract markets were required by regulations made pursuant to the Grain Futures Act to report to the Grain Futures Administration their net position in futures owned or controlled by them, long or short, by grain and by future, when they had net open commitments in any one future equal to or in excess of 500,000 bushels of wheat, corn or oats, and 200,000 bushels of rye or barley.

"4. Respondent in 1930 and 1931 had knowledge of the reporting requirements.

"5. Respondent, in 1930 and 1931, transacted his business through eight commission firms. He split his trade into 35 accounts. He carried some of his accounts in the names of relatives and associates. Respondent owned or controlled each of the 35 accounts.

"6. During the year 1930, respondent did not make any reports to the Grain Futures Administration.

"7. On approximately 130 days during 1930, respondent had open commitments in a single wheat future in accounts owned and controlled by him equal to or in excess of 500,000 bushels.

"8. On approximately 119 days during 1930, respondent had trades in a single wheat future in accounts owned and controlled by him in which he had open commitments equal to or in excess of 500,000 bushels.

"9. During the year 1931, respondent made reports irregularly to the Grain Futures Administration, none of which was true or correct as a statement of his net position on the market on the day covered by such report.

"10. During the year 1931, there were a great many days on which respondent made no reports at all, although having on such days open commitments in a single wheat future, in accounts owned and controlled by him, equal to or in excess of 500,000 bushels.

"11. On approximately 110 days during 1931, respondent had trades in a single wheat future in accounts owned and controlled by him, in which he had open commitments equal to or in excess of 500,000 bushels.

"12. On many days during the years 1930 and 1931, the respondent, in accounts definitely identified as belonging to him, had open commitments and trades which he failed to report as required by the Act and regulations made pursuant thereto.

"13. During the year 1931, the respondent made false reports of his open commitments and transactions in accounts definitely identified as his and indisputably belonging to him contrary to the act and regulations made pursuant thereto.

"14. Respondent's purpose in concealing his position in the market was to manipulate the price of grain and thereby to make large profits. He systematically allocated purchases and sales of wheat futures to the various accounts in order to keep them under 500,000 bushels, and thus to avoid detection. He attempted to manipulate the price of grain."

The commission also made conclusions wherein it found that Cutten's conduct constituted a violation of the Grain Futures Act and the rules and regulations made pursuant thereto, and that an order should be entered that all contract markets refuse all trading privileges to him for a period of two years. The order, which is here assailed, was thereupon entered.

The Grain Futures Act has been upheld and construed in the following decisions: Chicago Board of Trade *v.* Olsen, 262 U. S. 1; Board of Trade of Chicago *v.* Wallace, 67 F. (2d) 402; and Bartlett Frazier *v.* Hyde, 65 F. (2d) 350.

The commission filed an opinion which dealt at length with the various questions raised by petitioner, which we will consider under two headings: (a) The sufficiency of the evidence to support the findings. (b) The sufficiency of the findings to support the order.

(a) Petitioner asserts that the evidence does not support the findings of the commissioners. With this contention we cannot agree. It would serve no useful purpose to set forth the testimony upon which this conclusion is predicated. It is sufficient to say that the evidence amply supports the findings. It points persuasively to the conclusion that Cutten repeatedly, knowingly, and intentionally, during the deep depression years of 1930 and 1931, when agriculture was waging its losing battle for existence on account of low and ever lower prices, violated and flouted that provision of the rules and regulations promulgated pursuant to the authority of the statute which required him as a dealer to report the fact that he was short more than 500,000 bushels in any one future.

(b) Whether the findings support the order depends upon the construction which we are required to give to section 6 (b) of the act. The pertinent statutes read as follows:

"SEC. 5. The Secretary of Agriculture is hereby authorized and directed to designate any board of trade as a 'contract market' when, and only when, such board of trade complies with and carries out the following conditions and requirements: * * *.

"SEC. 6. Any board of trade desiring to be designated a 'contract market' shall make application to the Secretary of Agriculture for such designation and accompany the same with a showing that it complies with the above conditions, and with a sufficient assurance that it will continue to comply with the above requirements.

"(a) A commission composed of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General is authorized to suspend for a period not to exceed six months or to revoke the designation of any board of trade as a 'contract market' upon a showing that such board of trade has failed or is failing to comply with any of the above requirements or is not enforcing its rules of government made a condition of its designation as set forth in section 5. * * *

"(b) If the Secretary of Agriculture has reason to believe that any person is violating any of the provisions of this act, or is attempting to manipulate the market price of any grain in violation of the provisions of section 5 hereof, or of any of the rules or regulations made pursuant to its requirements, he may serve upon such person a complaint stating his charge in that respect, * * *. Upon evidence received the said commission may require all contract markets to refuse such person all trading privileges thereon for such period as may be specified in said order. * * *."

Petitioner argues that the power to suspend a trader must be found in section 6 (b), and an examination of said section makes it imperative that the trader accused of the wrongdoing condemned by the act be one who "is violating any of the provisions of this act, or is attempting to manipulate the market price of any grain." In other words, petitioner contends that any violation of the Grain Futures Act of which he was shown to have been guilty was committed some two years prior to the institution of these proceedings, and consequently he is not within the purview of said section 6.

The determination of the appeal, therefore, turns upon the use of the words "is violating" and "is attempting to manipulate" in said section.

Respondents argue that although the statute uses the present tense, it should be so construed as to include past transactions. A rather strong and persuasive argument is made in favor of the wisdom of such a construction, without which the power to deal with an offender is almost nil. We are, however, required to construe the statute, not to pass upon its purposes, but upon its wording.

Support for limiting the construction of the words so as to exclude instances where the violation has occurred may be found in section 6 (a). There, referring to failure of the board of trade to comply with the requirements of the Act, we find the words "has failed or is failing" to comply with with "any of the above requirements." What effect then must we give to the language of 6 (b) where the words "has failed" are omitted?

It is admittedly rather difficult to understand why Congress would, when dealing with the punishment of a Board, include past as well as present violations, whereas in section 6 (b) when dealing with the punishment of the individual trader, it provides for punishment only when such person "is violating" or "is attempting to manipulate the market."

Respondents' counsel, in addition to supporting their argument that the Act, to effectively accomplish its purpose, should be made to cover past offenses as well as existing violations of the Act, call our attention to the following decisions: Church of the Holy Trinity v. United States, 143 U. S. 457; United States v. Lacher, 134 U. S. 624; The Sterling, 65 F. (2d) 439; Silver v. Ladd, 7 Wall. 219; United States v. Kirby, 7 Wall. 482; Reiche v. Smythe, 13 Wall. 162; United States v. Katz, 271 U. S. 354; Sorrells v. United States, 287 U. S. 435; Helvering v. Stockholms Enskilda Bank, 293 U. S. 84; Huidekoper's Lessee v. Douglass, 3 Cranch 1; Hayden v. Ortkeiss, 83 Ky., 396; Louisville Southern Railroad Company's Receivers v. Lewis, 101 Ky. 296; Malloy v. Chicago & N. W. Ry., 109 Wis. 29; Rutherford v. Greene's Heirs, 2 Wheat. 196; Maysville & Lexington R. R. Co. v. Herick, 76 Ky. 122. These decisions are to the effect that a court is justified in departing from the plain language of the statute in order to give it a fair and practical meaning. Among the cases cited are some where the tense of the verb used in the statute is changed.

We are not, however, persuaded that the words of the statute here used can or should be so stretched as to include past violations which were committed and completed two years before the complaint was filed.[1]

We can not ignore the fact that Congress in dealing with contract markets provided for cancellation of rights if violations of regulations had occurred whereas in the next section the right to cancel a member's privilege on a contract market was limited to instances where the member is violating a regulation. While respondents' counsel has ably argued that the commission should have the power to suspend for past transgressions and without such authority the section is sterile—yet he has not met the stubborn and inescapable fact that Congress has spoken in two successive sections. In one it expressly included past as well as present violations and in the next section specified only existing violations as ground of suspension. To extend the latter section to the breadth of the former would be usurping the function of Congress.

Under such conditions it is for Congress to amend its legislation, if it deems it wise and desirable so to do, not for courts to do so by judicial construction.

The order is

Reversed.

And on the same day, to wit: On the twenty-fifth day of November 1935 the following further proceedings were had and entered of record, to wit: Monday, November 25, 1935.

Court met pursuant to adjournment.

Before Hon. Evan A. Evans, Circuit Judge; Hon. William M. Sparks, Circuit Judge; Hon. Robert C. Baltzell, District Judge.

5467

ARTHUR W. CUTTEN

vs.

HENRY A. WALLACE, SECRETARY OF AGRICULTURE, AND HENRY A. Wallace, Secretary of Agriculture, Homer Cummings, Attorney General, and Daniel C. Roper, Secretary of Commerce, Sitting as a Commission Under The Grain Futures Act

[1] Where there is no ambiguity in words of statute there is no room for statutory construction. U. S. v. Mo. Pac. Ry. Co., 278 U. S. 269; Helvering v. N. Y. Trust Co., 292 U. S. 455; Mich. v. Mich. Trust Co., 286 U. S. 334; Yorke v. U. S., 173 U. S. 439; Texas v. Chiles, 21 Wall. 488; U. S. v. Wiltberger, 5 Wheat. 76; Boudinot v. U. S., 11 Wall. 616; U. S. v. Union Pac. R. Co., 91 U. S. 72; Lewis v. U. S., 92 U. S. 618; Doe v. Considene, 6 Wall. 458; U. S. v. Ewing, 184 U. S., 140; Amer. Exp. Co. v. U. S. 212 U. S. 522; Caminetti v. U. S., 242 U. S. 470; U. S. v. Hill, 248 U. S. 420; U. S. v. Standard Brewery Co., 251 U. S. 210; Commissioner v. Gottlieb, 265 U. S. 310; St. Paul, M. & M. R. Co. v. Phelps, 137 U. S. 528; Cox v. Lott, 12 Wall. 204; Russell Motor Co. v. U. S., 261 U. S. 514; Duke Power Co. v. Commissioner, 44 F. (2d) 543; Braffith v. People, 26 F. (2d) 646; Riverdale Co-op. Assn. v. Commissioner, 48 F. (2d) 711; So. Carolina Produce Assn. v. Commissioner, 50 F. (2d) 742; Town of Clayton v. Col. & So. Ry. Co., 51 F. (2d) 977; Darby-Lynde Co. v. Alexander, 51 F. (2d) 56; In re Boggs-Rice Co., 66 F. (2d) 855; McCaughn v. Amer. Meter Co., 67 F. (2d) 148; United Electric Coal Co. v. Rice et al., decided by this court October 26, 1935.

Petition for Review of Order of Commission Under the Grain Futures Act

This cause came on to be heard on the petition of Arthur W. Cutten, for a review of the order of the Commission constituted under The Grain Futures Act, entered on February 12, 1935, in a matter entitled The Secretary of Agriculture, Complainant, vs. Arthur W. Cutten, Respondent, Docket No. 7, and also on the transcript of record of the proceedings had before said Commission in said matter, and was argued by counsel.

On consideration whereof: It is now here ordered, adjudged, and decreed by this court that the said order of the said Commission constituted under The Grain Futures Act be, and the same is hereby, reversed.

United States Circuit Court of Appeals for the Seventh Circuit

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten and printed pages, numbered from 1 to 12, inclusive, contain a true copy of the proceedings had and papers filed, excepting Petition for Review and order of February 28, 1935, granting leave to file same in this court, Assignment of Errors, and Additional Assignment of Errors, and Stipulation regarding printing record with Exhibit A attached, which are not copied here, as they are incorporated in the printed record in this cause, certified herewith; and also excepting appearances of counsel and stipulations and orders relative to filing briefs, in the case of Arthur W. Cutten, petitioner, vs. Henry A. Wallace, Secretary of Agriculture, and Henry A. Wallace, Secretary of Agriculture, Homer Cummings, Attorney General, and Daniel C. Roper, Secretary of Commerce, Sitting as a Commission Under The Grain Futures Act, respondents, No. 5467. October Term, 1935, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 9th day of December, A. D. 1935.

[SEAL.]

FREDERICK G. CAMPBELL,
Clerk of the United States Circuit Court,
of Appeals for the Seventh Circuit.

U. S. GOVERNMENT PRINTING OFFICE: 1936

485 Supreme Court of the United States

Order allowing certiorari

Filed March 9, 1936

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1936

Office Supreme Court, U. S.
FILED
FEB 6 1936
CHARLES ELMORE CROPLEY
CLERK

FILE COPY

No. 747

In the Supreme Court of the United States

OCTOBER TERM, 1935

HENRY A. WALLACE, SECRETARY OF AGRICULTURE, AND HENRY A. WALLACE, SECRETARY OF AGRICULTURE, HOMER CUMMINGS, ATTORNEY GENERAL, AND DANIEL C. ROPER, SECRETARY OF COMMERCE, SITTING AS A COMMISSION UNDER THE GRAIN FUTURES ACT, PETITIONERS

v.

ARTHUR W. CUTTEN

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

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In the Supreme Court of the United States

OCTOBER TERM, 1935

No. —

HENRY A. WALLACE, SECRETARY OF AGRICULTURE, AND HENRY A. WALLACE, SECRETARY OF AGRICULTURE, HOMER CUMMINGS, ATTORNEY GENERAL, AND DANIEL C. ROPER, SECRETARY OF COMMERCE, SITTING AS A COMMISSION UNDER THE GRAIN FUTURES ACT, PETITIONERS

v.

ARTHUR W CUTTEN

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

PETITION

The Solicitor General, on behalf of the petitioners, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Seventh Circuit, entered in the above cause on November 25, 1935 (R. 483–484), which reversed an order made by petitioners, sitting as a Commission under the Grain Futures Act.

OPINION BELOW

The opinion of the United States Circuit Court of Appeals for the Seventh Circuit (R. 479) has not been reported.

JURISDICTION

The judgment of the Circuit Court of Appeals for the Seventh Circuit sought to be reviewed was entered on November 25, 1935. (R. 483.) The jurisdiction of this Court is invoked under Section 6 (b) of the Grain Futures Act (c. 369, 42 Stat. 1001) and Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Section 6 (b) of the Grain Futures Act (Appendix, *infra,* p. 26) provides that if the Secretary of Agriculture has reason to believe that any person "is violating" any of the provisions of the Act or of any of the rules and regulations made pursuant thereto or is attempting to manipulate the market price of grain in violation of the provisions of the Act, the Secretary may serve upon that person a complaint stating his charge in that respect and, after a hearing, as provided for in the Section, the Commission established by the Act may enter an order directing all contract markets to refuse trading privileges to that person for such period as the order may specify. A complaint was served upon the respondent herein on April 11, 1934, charging that in 1930 and 1931 he violated the provisions of the

Grain Futures Act and the regulations made thereunder by (1) failing to report his commitments and trades in grain futures; (2) making false reports with respect to such commitments and trades; and (3) attempting to manipulate the price of grain. After a hearing, the Commission, on February 12, 1935, made findings sustaining the charges and ordered all contract markets to deny trading privileges to respondent for a period of two years.

The question presented is whether Section 6 (b) authorizes the Commission to order all contract markets to deny trading privileges to respondent because of violations of the Act committed more than two years prior to the institution of proceedings against him.

STATUTE INVOLVED

The pertinent provisions of the Grain Futures Act are set forth in the Appendix (*infra,* pp. 21–27).

STATEMENT

On April 11, 1934, the Secretary of Agriculture served on respondent a complaint alleging that respondent during the years 1930 and 1931 was, and now is, a member of the Board of Trade of the City of Chicago, a duly designated contract market; that during 1930 and 1931 respondent was required, by regulations made pursuant to the provisions of the Grain Futures Act, to report to the Grain Futures Administration (a) his net position in wheat futures owned and controlled by him when he

had net open commitments in any one grain future equal to or in excess of 500,000 bushels, and (b) his daily trades in wheat futures in which he owned or controlled open commitments equal to or in excess of 500,000 bushels; that during the years 1930 and 1931 respondent conspired with persons and firms through whom he dealt to conceal his position and trades on the Chicago Board of Trade in an attempt to manipulate the price of grain; that he made false reports to the Grain Futures Administration; and that he failed and refused to report his trades in wheat futures and his position in the market in violation of the Grain Futures Act and the rules and regulations made pursuant thereto (R. 10–25). Respondent filed no formal answer but at the hearings his counsel denied all these allegations (R. 32). Hearings were held before a referee and oral testimony was taken (R. 26–257). This testimony was transmitted to the Commission and written briefs were filed. Thereafter, the Commission heard oral argument on the issues. On February 12, 1935, the Commission handed down its written opinion (R. 451–464), findings of fact and conclusion sustaining the charges of the Secretary of Agriculture (R. 464–466), and an order was entered directing all contract markets to refuse all trading privileges thereon to Arthur W. Cutten for a period of two years from March 1, 1935 (R. 466).

On February 28, 1935, the respondent filed a petition in the United States Circuit Court of Appeals for the Seventh Circuit praying that the Court review the order entered by the Commission (R. 2). On November 25, 1935, the Circuit Court of Appeals rendered an opinion in which it held (1) that the evidence before the Commission fully supported its findings and its conclusion that respondent had violated the provisions of the Act, and the regulations made pursuant thereto, and (2) that Section 6 (b) applied only to continuing offenses and consequently that the Commission had no power under that Section to deny respondent trading privileges for violations of the Act committed two years prior to the institution of proceedings against him (R. 479–483).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals for the Seventh Circuit erred:

(1) In holding that under Section 6 (b) of the Grain Futures Act the Commission had no power to order all contract markets to deny respondent trading privileges because of violations of the Act committed more than two years prior to the institution of proceedings against him; and

(2) In reversing the order of the Commission.

REASONS FOR GRANTING THE WRIT

The question of law here presented is one of great public importance which should be passed upon by this Court.

One of the primary purposes of the Grain Futures Act is to prevent manipulation of the price of grain. *Board of Trade* v. *Olsen,* 262 U. S. 1, 37. The construction of Section 6 (b) of the Act adopted by the Circuit Court of Appeals thwarts this purpose. The provisions of the Act with respect to the making of reports by members of Boards of Trade are an important part of the statutory scheme. The Act authorizes the Secretary of Agriculture to designate a Board of Trade as a contract market only when the governing board thereof provides for the filing by its members of reports of transactions in grains in accordance with rules and regulations prescribed by the Secretary of Agriculture. Section 6 (b) attempts to provide for enforcement of the reporting requirements against individual traders. It provides that if the Secretary of Agriculture has reason to believe that any person "is violating" any of the provisions of the Act or of the rules and regulations made thereunder, or is attempting to manipulate the price of grain, he may serve upon that person a complaint stating his charge in that respect. Provision is made for a hearing. If the evidence adduced at the hearing sustains the complaint of the Secretary of Agriculture, the Commission may require all contract markets to refuse the person trading privileges for such period as the Commission may spec-

ify. The importance of the reporting requirements is too obvious to require emphasis.[1]

The Circuit Court of Appeals in this case has construed Section 6 (b) as applying only to *existing or continuing violations* and as not authorizing the Commission to deny trading privileges because of violations which are completed transactions. It conceded that this construction of the Section rendered it virtually nugatory, saying (R. 482):

> Respondents argue that although the statute uses the present tense, it should be so construed as to include past transactions. A rather strong and persuasive argument is made in favor of the wisdom of such a construction *without which the power to deal with an offender is almost nil.* (Italics supplied.)

That the Circuit Court of Appeals is correct in this estimate of the effect of its decision can hardly be disputed. Its construction of Section 6 (b) eviscerates the Section and leaves the Commission virtually powerless to prevent violations of the reporting requirements by traders and otherwise very

[1] In *Bartlett Frazier Co.* v. *Hyde*, 65 F. (2d) 350, certiorari denied 290 U. S. 654, the Circuit Court of Appeals for the Seventh Circuit said with respect to the Act (p. 352): "Without the unqualified duty to report and the untrammeled right of inspection, the efficacy of the act would be unduly restricted * * *."

severely curtails the power of the Commission to prevent the manipulation of the price of grain.[2]

The situation is particularly serious with respect to the reporting requirements because it is virtually impossible to apprehend a trader *in the act of violating those requirements.* If the regulations made under the Act require a report to be filed by a certain time, the offense of failing to report is not complete until that time has passed and no report has been filed. There is no making of a false report until the false report is filed, and when it is filed the offense belongs to the past and not to the present. The very nature of these offenses makes it impossible for them to be *existing* or *continuing.* They are born and fall into the class of past transactions at one and the same moment. Apprehension cannot be contemporaneous with commission. Even if the failure to report or the making of false reports continues from day to day over an interval of time, the Commission can be deprived of jurisdiction by the making of one accurate report, because that would presumably destroy the continuing character of the offenses and place the reports theretofore made or the previous failure to report in the category of completed transactions. It is

[2] It is true that Section 6 (a) permits the Commission to suspend or revoke the designation of a board of trade as a contract market upon a showing that the board has failed or is failing to comply with any of the requirements of the Act or is not enforcing the rules of government made a condition of its designation. Manipulation of price, however, is always the work of individual traders. To be effective, a preventative statute must operate directly on them.

almost equally difficult under this construction for the Commission otherwise to take action with respect to manipulations of the price of grain. Secrecy is essential to manipulation and the making of false reports or the failure to make any reports whatsoever is essential to secrecy. If it is deprived of its power to enforce the reporting requirements the Commission loses its most effective tool for the detection of a continuing manipulation. Furthermore, because price manipulation is accomplished in secret and (as in the instant case) by the splitting of accounts among a large number of commission houses its apprehension is difficult and requires a long and detailed examination of numerous books of account.[3] Hence, the process of detection usually cannot be completed until the at-

[3] In the instant case the respondent so effectively concealed his transactions in grain futures by splitting his accounts and dividing them among various commission houses that the Grain Futures Administration required two years to discover the magnitude and seriousness of his market operations. (R. 172–173.) The nature of the task which the Grain Futures Administration must perform in tracing concealed market operations is indicated by the following circumstances in the instant case: The purchase of each 5,000 bushels of grain is represented by a separate entry in the street book of the commission firm making the purchase (R. 34). From time to time respondent's commitments in all grain futures amounted to millions of bushels. For example, on June 23, 1930, respondent was short 7,725,000 bushels of wheat (Ex. 411, R. 404). To discover these commitments it was necessary to examine upwards of 1,500 entries on street books. And the street book is not the only book of account involved. There are also orders, grain ledgers, confirmations, purchase and sale statements, and financial ledgers, all of which have to be examined.

tempt to manipulate has been consummated or abandoned. Apprehension of a trader in the very act of manipulation is almost impossible.

It should be noted that no question of fact is raised by petitioners. The Circuit Court of Appeals found that the findings of the Commission with respect to respondent's violation of the provisions of the Grain Futures Act and regulations made thereunder were fully supported by the evidence. With respect to this point the court said (R. 481):

> It is sufficient to say that the evidence amply supports the findings. It points persuasively to the conclusion that Cutten repeatedly, knowingly, and intentionally, during the deep depression years of 1930 and 1931, when agriculture was waging its losing battle for existence on account of low and ever lower prices, violated and flouted that provision of the rules and regulations promulgated pursuant to the authority of the statute which required him as a dealer to report the fact that he was short more than 500,000 bushels in any one future.

If the decision of the Circuit Court of Appeals is permitted to stand, the Commission will be virtually powerless to prevent manipulation of the price of grain, and the purpose of Congress to pro-

tect producers, consumers, and persons handling grain in interstate commerce against the detrimental effects of such manipulation will fail of accomplishment.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Seventh Circuit should be granted.

STANLEY REED,
Solicitor General.

FEBRUARY, 1936.

BRIEF IN SUPPORT OF PETITION*

ARGUMENT

I

SECTION 6 (b) SHOULD BE CONSTRUED SO AS TO GIVE IT A REASONABLE AND PRACTICAL MEANING

The issue here presented is, what interpretation shall be given to the words "is violating" and "is attempting to manipulate" in Section 6 (b) of the Grain Futures Act. Petitioners contend that these words, properly read, cover past violations of the Act as well as present and continuing ones. The respondent contends that these words permit the Commission to proceed against a trader only if he is apprehended *flagrante delicto,* and the Circuit Court of Appeals adopted this interpretation.

This is not a case where the court is asked to choose between two possible meanings of a statute merely on the ground that the balance of convenience rests with one rather than the other. The choice here is between meaning and nullity. It has been pointed out in the petition that if the construction of the Circuit Court of Appeals is correct, Section 6 (b) is robbed of all vitality, its language loses all significance, and the Act as a whole stands as if Section 6 (b) had never been included. The

* Opinions below, jurisdiction, questions presented, statute involved, statement, and specification of errors to be urged, which are set out in the petition, pp. 2–5, will not be repeated here.

Grain Futures Act is designed to prevent manipulation of the price of grain. Manipulation is the work of individual traders. Section 6 (b) purports to set up machinery for the control of traders, and the enforcement of the reporting requirements made by the Secretary of Agriculture is the mainspring of that machinery. Violation of those requirements cannot, except in the rarest case, be a continuing or present offense. To give literal import to the words "is violating" and "is attempting to manipulate", as the Circuit Court of Appeals did, is to prevent Section 6 (b) from accomplishing the purpose for which it was placed in the law. It is submitted that there is no dogma of literal construction which calls for this result.

This Court has not hesitated to deviate from the strict literal meaning of words in a statute to avoid an absurd and impracticable result and to give the statute meaning. Thus, it has limited the scope of statutes when a literal reading of their words would have led to an absurd or unreasonable consequence. *Church of the Holy Trinity* v. *United States,* 143 U. S. 457; *United States* v. *Kirby,* 7 Wall. 482; *Reiche* v. *Smythe,* 13 Wall. 162. In similar circumstances it has sometimes extended the literal meaning of a statute. See *Silver* v. *Ladd,* 7 Wall. 219; *United States* v. *Lacher,* 134 U. S. 624; *United States* v. *Katz,* 271 U. S. 354; *Sorrells* v. *United States,* 287 U. S. 435.

This Court has also changed the tense of a verb when it was necessary to do so in order to accomplish the true intent of a statute. See *Huide-*

koper's Lessee v. *Douglass,* 3 Cranch 1 ("residing" construed as "to reside"); *Rutherford* v. *Greene's Heirs,* 2 Wheat. 196 ("shall be" construed, in effect, to mean "is"). A recent decision of the Circuit Court of Appeals for the Fifth Circuit is directly in point and illustrates the proper rule to be applied in the instant case. *The Sterling,* 65 F. (2d) 439. This case came to the Circuit Court of Appeals on appeal from decrees adjudging two coastwise vessels to be forfeited for having been engaged in a trade other than that for which they were licensed. It was contended by the appellants that the libels failed to allege, and the facts failed to establish, cause for forfeiture, because it appeared that the vessels were not at the time of their respective seizures engaged in violating their licenses, but the violations had occurred at some prior time. The statute there involved (R. S. sec. 4377) provided in part that "Whenever any licensed vessel * * * *is* employed in any other trade than that for which she is licensed * * * such vessel * * * shall be forfeited." The Circuit Court of Appeals affirmed the decree, saying (at p. 440):

> The construction appellants contend for leads to absurd results. They say that, because the statute uses the word "is" rather than the words "has been" with reference to the forbidden "transfer" and the forbidden business, it speaks only in the present tense, relates alone to the facts existing at the time of seizure, and operates to forfeit

only when seizure and violation are contemporaneous. Under such construction such a vessel could be transferred with impunity as the owner willed, for it would be impossible for officers to exercise such close surveillance as that the act of transfer could not be accomplished except in their sight. Under such construction, a vessel could go in and out of her licensed trade whenever not directly under the eye of some seizing officer. The statute intended no such far-fetched result. It does not so provide. In using the words "is transferred" and "is employed", it used them in a preterit sense, to define a status brought about by the forbidden act with consequent forfeiture.[1]

II

THE OTHER PROVISIONS OF SECTION 6 (b) SHOW THAT IT WAS INTENDED TO COVER PAST VIOLATIONS AS WELL AS PRESENT AND CONTINUING ONES

If Congress had intended Section 6 (b) to apply only to continuing or present violations, it seems obvious that it would have provided for a summary procedure by which the market operations of violators could be stopped at once. It is significant that the section does not do this. It does not provide for cease and desist orders such as the Federal

[1] For cases in which state courts have changed the tense of verbs in order to prevent a statute from being meaningless, see *Hayden* v. *Ortkeiss*, 83 Ky. 396; *Maysville & Lexington R. R. Co.* v. *Herrick*, 76 Ky. 122; *Malloy* v. *Chicago & Northwestern R. Co.*, 109 Wis. 29, 85 N. W. 130.

Trade Commission is authorized to issue, or for any other remedy in the nature of a temporary injunction by which a continuing violation can be summarily stopped. It does provide for three days' notice and a hearing preceding the denial of trading privileges. The evidence at the hearing must be reduced to writing and transmitted to the Secretary of Agriculture as Chairman of the Commission. The Commission consists of three members of the President's Cabinet who are charged with many other duties and responsibilities under various other Acts of Congress. After the Commission has made its order, provision is made for judicial review by the Circuit Court of Appeals and the Supreme Court. It is clear that, pending this review, the Commission's order may be stayed.[2] Far from being summary, this procedure requires a considerable period of time.[3] Thus, the very machinery of enforcement and judicial review provided for in Section 6 (b) shows that the section was not intended to be restricted in its application to present or continuing offenses.

---

[2] The language of Section 6 (b) authorized the Circuit Court of Appeals to grant such equitable relief as seems just. Such relief doubtless includes the granting of an order staying the enforcement of the Commission's order. A stay was granted in the instant case. (R. 2.)

[3] In the instant case the complaint against respondent was served on April 11, 1934. The Commission's order was not issued until February 12, 1935. The Circuit Court of Appeals did not hand down an opinion with respect to the respondent's petition for review until November 25, 1935.

III

THE LANGUAGE OF SECTION 6 (a) IS NOT INCONSISTENT WITH PETITIONERS' INTERPRETATION OF SECTION 6 (b)

In construing Section 6 (b) as it did, the Circuit Court of Appeals relied chiefly upon the fact that Section 6 (a), which provides for proceedings against contract markets, uses the words "has failed or is failing" (R. 483). It is submitted that this fact is not conclusive of the meaning of Section 6 (b).

It may be conceded that when different words are used in different parts of a statute, and their use is deliberate and premeditated, the difference in language may properly be regarded as mirroring a difference in intent. But when this rule is applied mechanically, irrespective of the circumstances under which the words were chosen, and in disregard of the results which will follow, it ceases to be a useful canon of construction and becomes a mischievous fiction. If the words of Section 6 (a) and 6 (b) are viewed realistically and in the light of their legislative history, it is clear that in this case the difference in language has no significance.

The assumption underlying the contention that difference in language always reflects difference in intent is that the same draftsman has chosen different words to achieve a different result. In the case of Sections 6 (a) and 6 (b), however, this assumption is without foundation. These sections had

their genesis in the Future Trading Act which was passed by the 67th Congress on August 24, 1921.[4] The Act was introduced in the House (H. R. 5676) and, as introduced, contained a Section 6 (a) similar to Section 6 (a) of the Grain Futures Act. It did not include Section 6 (b) or any analogous provision. Section 6 (b) was added by the Senate Committee on Agriculture and Forestry in substantially the same form in which it appears in the Grain Futures Act, including the words "is violating." (See Senate Report 212, 67th Cong., 1st Sess.) Section 6 (b) was printed in the Conference Report made by the House Committee (House Reports 345, 362, 67th Cong., 1st Sess.) but was not discussed.

Thus, in fact, Sections 6 (a) and 6 (b) originated in different committees and were not drafted by the same persons. The difference in wording was doubtless inadvertent and not deliberate and premeditated. This is the conclusion which must be drawn from the apparent belief of the Senate Committee that it was adding a section which accomplished the same result with respect to indi-

[4] The Future Trading Act was held unconstitutional by this Court in *Hill* v. *Wallace*, 259 U. S. 44. Thereafter, at the second session of the 67th Congress, the Grain Futures Act was passed (42 Stat. 998). Sections 6 (a) and 6 (b) of the Grain Futures Act were substantially the same as Sections 6 (a) and 6 (b) of the Future Trading Act. The legislative history of the Grain Futures Act throws no additional light on the meaning of Section 6 (b).

vidual traders that Section 6 (a) accomplished with respect to contract markets. Senator Capper, one of the sponsors of the bill and a member of the Senate Committee on Agriculture and Forestry which added Section 6 (b) to the Act, made statements in the debate in the Senate, after Section 6 (b) had been added, which clearly show that he thought it conferred authority to proceed with respect to past violations of the Act as well as present or continuing ones. He declared:

> The bill then vests with the Secretary of Agriculture power, subject to court review, to investigate an individual member who is charged with disseminating false crop reports or manipulating prices, and, upon finding that such individual *has been guilty* of such practices, to suspend him from trading privileges of contract markets. (Italics supplied). (61 Congressional Record, Part 5, p. 4762.)

And again he stated:

> When it comes to the matter of enforcing the law, that power must be in some one. It would be absurd to enact a law without providing for its enforcement. Aside from the usual penalty clause two methods are used. One of them was placed in the bill at the suggestion of the exchanges, and that was to provide that in case one member of a board of trade *manipulated prices* or *circulated false reports* the Secretary of Agriculture, after a hearing, shall suspend him from the

privileges of future trading. [Italics supplied.] (61 Congressional Record, part 5, p. 4764.)[5]

In the face of this legislative history it is unreasonable to regard the language of Section 6 (a) as decisive of the question here presented. The presence of the words "has failed" in Section 6 (a) does not preclude the court from giving to Section 6 (a) an interpretation which is not absurd and impracticable.

CONCLUSION

It is respectfully submitted that the public interest will be promoted by the granting of this petition and the decision by this Court of the question involved.

STANLEY REED,
Solicitor General.

FEBRUARY, 1936.

[5] Light is thrown on the intention of the Senate Committee in adding Section 6 (b) of the law by the nature of some of the testimony given by witnesses in the hearings before that Committee. A number of witnesses testified that they thought the Act should contain a section permitting action against individual traders as well as against contract markets under Section 6 (a). Presumably the scope of authority over traders was to be as wide as that over contract markets. See *Hearings before the Committee on Agriculture and Forestry of the United States Senate on H. R. 5676*, pp. 85, 151–3, 216, 277, 301, 335–337, 408–410. Admittedly, the statements of these witnesses are not authority with respect to the interpretation of Section 6 (b) but they have some probative value with respect to the motives which caused the Senate Committee to add that section to the Act.

APPENDIX

The Grain Futures Act of September 21, 1922, c. 369, 42 Stat. 998, 999, 1000, 1001 (U. S. C., Title 7, Secs. 5, 7, 8), provides, in part, as follows:

> SEC. 3. Transactions in grain involving the sale thereof for future delivery as commonly conducted on boards of trade and known as "futures" are affected with a national public interest; that such transactions are carried on in large volume by the public generally and by persons engaged in the business of buying and selling grain and the products and by-products thereof in interstate commerce; that the prices involved in such transactions are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining the prices to the producer and the consumer of grain and the products and by-products thereof and to facilitate the movements thereof in interstate commerce; that such transactions are utilized by shippers, dealers, millers, and others engaged in handling grain and the products and by-products thereof in interstate commerce as a means of hedging themselves against possible loss through fluctuations in price; that the transactions and prices of grain on such boards of trade are susceptible to speculation, manipulation, and control, and sudden or unreasonable fluctuations in the prices thereof frequently occur as a result of such speculation, manipulation, or control, which are detrimental to the producer or the consumer and the persons handling grain and products and by-products thereof in inter-

state commerce, and that such fluctuations in prices are an obstruction to and a burden upon interstate commerce in grain and the products and by-products thereof and render regulation imperative for the protection of such commerce and the national public interest therein.

* * * * *

SEC. 5. The Secretary of Agriculture is hereby authorized and directed to designate any board of trade as a "contract market" when, and only when, such board of trade complies with and carries out the following conditions and requirements:

(a) When located at a terminal market where cash grain of the kind specified in the contracts of sale of grain for future delivery to be executed on such board is sold in sufficient volumes and under such conditions as fairly to reflect the general value of the grain and the differences in value between the various grades of such grain, and where there is available to such board of trade official inspection service approved by the Secretary of Agriculture for the purpose.

(b) When the governing board thereof provides for the making and filing by the board or any member thereof, as the Secretary of Agriculture may direct, of reports in accordance with the rules and regulations, and in such manner and form and at such times as may be prescribed by the Secretary of Agriculture, showing the details and terms of all transactions entered into by the board, or the members thereof, either in cash transactions consummated at, on, or in a board of trade, or transactions for future delivery, and when such governing board provides, in accordance with such rules and regulations, for the keeping of a

record by the board or the members of the board of trade, as the Secretary of Agriculture may direct, showing the details and terms of all cash and future transactions entered into by them, consummated at, on, or in a board of trade, such record to be in permanent form, showing the parties to all such transactions, including the persons for whom made, any assignments or transfers thereof, with the parties thereto, and the manner in which said transactions are fulfilled, discharged, or terminated. Such record shall be required to be kept for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct, and shall at all times be open to the inspection of any representative of the United States Department of Agriculture or United States Department of Justice.

(c) When the governing board thereof provides for the prevention of dissemination by the board or any member thereof, of false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of grain in interstate commerce.

(d) When the governing board thereof provides for the prevention of manipulation of prices or the cornering of any grain by the dealers or operators upon such board.

(e) When the governing board thereof does not exclude from membership in, and all privileges on, such board of trade, any duly authorized representative of any lawfully formed and conducted cooperative association of producers having adequate financial responsibility which is engaged in cash grain business, if such association has complied, and agrees to comply, with such terms

and conditions as are or may be imposed lawfully on other members of such board: *Provided,* That no rule of a contract market shall forbid or be construed to forbid the return on a patronage basis by such cooperative association to its bona fide members of moneys collected in excess of the expense of conducting the business of such association.

(f) When the governing board provides for making effective the final orders or decisions entered pursuant to the provisions of paragraph (b) of section 6 of this Act.

SEC. 6. Any board of trade desiring to be designated a "contract market" shall make application to the Secretary of Agriculture for such designation and accompany the same with a showing that it complies with the above conditions, and with a sufficient assurance that it will continue to comply with the above requirements.

(a) A commission composed of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General is authorized to suspend for a period not to exceed six months or to revoke the designation of any board of trade as a "contract market" upon a showing that such board of trade has failed or is failing to comply with any of the above requirements or is not enforcing its rules of government made a condition of its designation as set forth in section 5. Such suspension or revocation shall only be after a notice to the officers of the board of trade affected and upon a hearing: *Provided,* That such suspension or revocation shall be final and conclusive unless within fifteen days after such suspension or revocation by the said commission such board of trade appeals to the circuit court of appeals for the circuit in which it has its principal place

of business by filing with the clerk of such court a written petition praying that the order of the said commission be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such board of trade will pay the costs of the proceedings if the court so directs. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Secretary of Agriculture, chairman of said commission, or any member thereof, and the said commission shall forthwith prepare, certify, and file in the court a full and accurate transcript of the record in such proceedings, including the notice to the board of trade, a copy of the charges, the evidence, and the report and order. The testimony and evidence taken or submitted before the said commission duly certified and filed as aforesaid as a part of the record shall be considered by the court as the evidence in the case. The proceedings in such cases in the circuit court of appeals shall be made a preferred cause and shall be expedited in every way. Such a court may affirm or set aside the order of the said commission or may direct it to modify its order. No such order of the said commission shall be modified or set aside by the circuit court of appeals unless it is shown by the board of trade that the order is unsupported by the weight of the evidence or was issued without due notice and a reasonable opportunity having been afforded to such board of trade for a hearing, or infringes the Constitution of the United States, or is beyond the jurisdiction of said commission: *Provided further*, That if the Secretary of Agriculture shall refuse to designate as a contract market any board of trade that has made application

therefor, then such board of trade may appeal from such refusal to the commission described therein, consisting of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General of the United States, with the right to appeal as provided for in other cases in this section, the decision on such appeal to be final and binding on all parties interested.

(b) If the Secretary of Agriculture has reason to believe that any person is violating any of the provisions of this Act, or is attempting to manipulate the market price of any grain in violation of the provisions of section 5 hereof, or of any of the rules or regulations made pursuant to its requirements, he may serve upon such person a complaint stating his charge in that respect, to which complaint shall be attached or contained therein a notice of hearing, specifying a day and place not less than three days after the service thereof, requiring such person to show cause why an order should not be made directing that all contract markets until further notice of the said commission refuse all trading privileges thereon to such person. Said hearing may be held in Washington, District of Columbia, or elsewhere, before the said commission, or before a referee designated by the Secretary of Agriculture, who shall cause all evidence to be reduced to writing and forthwith transmit the same to the Secretary of Agriculture as chairman of the said commission. That for the purpose of securing effective enforcement of the provisions of this Act the provisions, including penalties, of section 12 of the Interstate Commerce Act, as amended, relating to the attendance and testimony of witnesses, the production of documentary evidence, and the immunity of witnesses, are

made applicable to the power, jurisdiction, and authority of the Secretary of Agriculture, the said commission, or said referee in proceedings under this Act, and to persons subject to its provisions. Upon evidence received the said commission may require all contract markets to refuse such person all trading privileges thereon for such period as may be specified in said order. Notice of such order shall be sent forthwith by registered mail or delivered to the offending person and to the governing boards of said contract markets. After the issuance of the order by the commission, as aforesaid, the person against whom it is issued may obtain a review of such order or such other equitable relief as to the court may seem just by filing in the United States circuit court of appeals of the circuit in which the petitioner is doing business a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission by delivering such copy to its chairman or to any member thereof, and thereupon the commission shall forthwith certify and file in the court a transcript of the record theretofore made, including evidence received. Upon the filing of the transcript the court shall have jurisdiction to affirm, to set aside, or modify the order of the commission, and the findings of the commission as to the facts, if supported by the weight of evidence, shall in like manner be conclusive. In proceedings under paragraphs (a) and (b) the judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 240 of the Judicial Code.

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No. 747

In the Supreme Court of the United States

OCTOBER TERM, 1935

HENRY A. WALLACE, SECRETARY OF AGRICULTURE, AND HENRY A. WALLACE, SECRETARY OF AGRICULTURE, HOMER CUMMINGS, ATTORNEY GENERAL, AND DANIEL C. ROPER, SECRETARY OF COMMERCE, SITTING AS A COMMISSION UNDER THE GRAIN FUTURES ACT, PETITIONERS

v.

ARTHUR W. CUTTEN

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR PETITIONERS

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In the Supreme Court of the United States

OCTOBER TERM, 1935

No. 747

HENRY A. WALLACE, SECRETARY OF AGRICULTURE, AND HENRY A. WALLACE, SECRETARY OF AGRICULTURE, HOMER CUMMINGS, ATTORNEY GENERAL, AND DANIEL C. ROPER, SECRETARY OF COMMERCE, SITTING AS A COMMISSION UNDER THE GRAIN FUTURES ACT, PETITIONERS

v.

ARTHUR W. CUTTEN

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR PETITIONERS

OPINION BELOW

The opinion of the Circuit Court of Appeals for the Seventh Circuit (R. 479) is reported in 80 F. (2d) 140.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered November 25, 1935 (R. 483–484). Petition for certiorari was filed February 6, 1936,

and was granted March 9, 1936 (R. 485). The jurisdiction of this Court rests on Section 6 (b) of the Grain Futures Act, c. 369, 42 Stat. 1002 (U. S. C., Tit. 7, Sec. 10), and Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925. See c. 229, 43 Stat. 936, 938 (U. S. C., Tit. 28, Sec. 347).

QUESTION PRESENTED

Section 6 (b) of the Grain Futures Act (Appendix, *infra,* pp. 145–146) provides that if the Secretary of Agriculture has reason to believe that any person "is violating" any of the provisions of the Act or any of the rules and regulations made pursuant thereto or "is attempting" to manipulate the market price of grain in violation of the provisions of the Act, the Secretary may serve upon that person a complaint stating his charge in that respect and, after a hearing, as provided for in the Section, the Commission established by the Act consisting of the Secretary of Agriculture, the Attorney General, and the Secretary of Commerce, may enter an order directing all contract markets to refuse trading privileges to that person for such period as the order may specify. After an extensive investigation lasting more than two years, a complaint was served upon respondent on April 11, 1934, charging that in 1930 and 1931 he violated the provisions of the Grain Futures Act and the regulations made thereunder by (1) failing to report commitments and trades in grain futures; (2) making

false reports with respect to commitments and trades in grain futures; and (3) attempting to manipulate the price of grain. After a hearing, the Commission, on February 12, 1935, made findings sustaining the charges in the complaint and ordered all contract markets to deny trading privileges to respondent for a period of two years from March 1, 1935. A stay of the order was granted pending judicial review.

The question presented is whether Section 6 (b) authorizes the Commission to order all contract markets to deny trading privileges to respondent because of the violations of the Act committed by him more than two years prior to the institution of the proceedings against him, or whether that Section merely authorizes the institution of proceedings during the very time the Act is being violated.

STATUTE INVOLVED

The Grain Futures Act is set forth in Appendix D (*infra,* pp. 137–149).

STATEMENT

HISTORY OF THIS PROCEEDING

On April 11, 1934, the Secretary of Agriculture served on respondent a complaint (R. 10–25) alleging that respondent during the years 1930 and 1931 was, and now is, a member of the Board of Trade of the City of Chicago, a duly designated contract market; that during the years 1930 and 1931 respondent was required by regulations made

pursuant to provisions of the Grain Futures Act to report to the Grain Futures Administration of the Department of Agriculture (a) his net position in wheat futures owned and controlled by him when he had net open commitments in any one grain future equal to or in excess of 500,000 bushels, and (b) his daily trades in those wheat futures in which he owned or controlled open commitments equal to or in excess of 500,000 bushels; that during the years 1930 and 1931 respondent conspired with persons and firms through whom he dealt to conceal his trading and position in the market from the Grain Futures Administration and that he attempted to manipulate the price of grain; that he made false reports of his position in the market, and of trades made by him, to the Grain Futures Administration; that he failed and refused to report his position in the market and his trades in violation of the Grain Futures Act and the regulations and reporting requirements made pursuant thereto (R. 11); and that he caused various grain firms and persons through whom his trades were made to keep false records, to make false reports to the Grain Futures Administration, and to split and divide his account into several sections and to carry the same under various names and symbols and by this means conceal and cover up his trades (R. 11).

Respondent filed no formal answer, but at the hearings his counsel denied all these allegations

(R. 32). The hearings were held before a referee and oral testimony was taken (R. 26-257). Numerous exhibits were also put in evidence (R. 275–451).[1] This testimony and the exhibits were transmitted to the Commission and written briefs were filed. Thereafter, the Commission heard oral argument on the issues (R. 451).

On February 12, 1935, the Commission handed down its written opinion (R. 451–464), findings of fact and conclusion, sustaining the essential charges of the complaint (R. 464–466). The Commission's findings of fact are as follows:

> 1. The Chicago Board of Trade was duly designated as a contract market under the Grain Futures Act on May 3, 1923, and it has been a contract market continuously since that date.
>
> 2. During the years 1930 and 1931 respondent was, and now is, a member of the Chicago Board of Trade.
>
> 3. From and after October 31, 1927, through and including the year 1931, members of contract markets were required by regulations made pursuant to the Grain Futures Act to report to the Grain Futures Administration their net position in futures owned or controlled by them, long or short,

[1] Some of these exhibits have been reproduced in full or in summary form in the printed record now before this Court (R. 275–419), and others have been abstracted for the printed record (R. 420–451). Those exhibits which were abstracted for the printed record have also been transmitted to the Clerk of this Court as original exhibits.

by grain and by future, when they had net open commitments in any one future equal to or in excess of 500,000 bushels of wheat, corn or oats and 200,000 bushels of rye or barley.

4. Respondent in 1930 and 1931 had knowledge of the reporting requirements.

5. Respondent, in 1930 and 1931, transacted his business through eight commission firms. He split his trade into 35 accounts. He carried some of his accounts in the names of relatives and associates. Respondent owned or controlled each of the 35 accounts.

6. During the year 1930, respondent did not make any reports to the Grain Futures Administration.

7. On approximately 130 days during 1930, respondent had open commitments in a single wheat future in accounts owned and controlled by him equal to or in excess of 500,000 bushels.

8. On approximately 119 days during 1930, respondent had trades in a single wheat future in accounts owned and controlled by him in which he had open commitments equal to or in excess of 500,000 bushels.

9. During the year 1931 respondent made reports irregularly to the Grain Futures Administration, none of which was true or correct as a statement of his net position on the market on the day covered by such report.

10. During the year 1931 there were a great many days on which respondent made

no reports at all, although having on such days open commitments in a single wheat future, in accounts owned and controlled by him, equal to or in excess of 500,000 bushels.

11. On approximately 110 days during 1931 respondent had trades in a single wheat future in accounts owned and controlled by him, in which he had open commitments equal to or in excess of 500,000 bushels.

12. On many days during the years 1930 and 1931, respondent, in accounts definitely identified as belonging to him, had open commitments and trades which he failed to report as required by the Act and regulations made pursuant thereto.

13. During the year 1931, respondent made false reports of his open commitments and transactions in accounts definitely identified as his and indisputably belonging to him contrary to the Act and regulations made pursuant thereto.

14. Respondent's purpose in concealing his position in the market was to manipulate the price of grain and thereby to make large profits. He systematically allocated purchases and sales of wheat futures to the various accounts in order to keep them under 500,000 bushels, and thus to avoid detection. He attempted to manipulate the price of grain. [R, 464–465.]

Accordingly an order was entered directing all contract markets to refuse all trading privileges thereon to Arthur W. Cutten for a period of two years from March 1, 1935 (R. 466).

On February 28, 1935, respondent filed a petition in the United States Circuit Court of Appeals for the Seventh Circuit, praying that the court review the order entered by the Commission (R. 2). The petition was filed pursuant to Section 6 (b) of the Act, which provides that a person against whom an order of the Commission is entered may obtain a review of such order by filing a petition in the Circuit Court of Appeals of the circuit in which petitioner is doing business, praying that such order of the Commission be set aside. A full transcript of the record before the Commission was certified to the Circuit Court of Appeals (R. 467), and the case was heard by the court on that record. The Circuit Court of Appeals heard oral argument on October 29, 1935 (R. 478), and on November 25, 1935, rendered an opinion in which it held (1) that the evidence before the Commission fully supported its findings and its conclusion that respondent had violated the provisions of the Act and the regulations made pursuant thereto, and (2) that Section 6 (b) empowers the Commission to act only against persons who are presently committing offenses and consequently that the Commission had no power under that Section to deny respondent trading privileges for violations of the Act committed two years prior to the institution of proceedings against him (R. 479–483). Accordingly, the court entered a judgment reversing the order of the Commission (R. 483–484).

The Circuit Court of Appeals found that the evidence amply supports the findings. With respect to the evidence, the court said:

> Petitioner asserts that the evidence does not support the findings of the commissioners. With this contention we cannot agree. It would serve no useful purpose to set forth the testimony upon which this conclusion is predicated. It is sufficient to say that the evidence amply supports the findings. It points persuasively to the conclusion that Cutten repeatedly, knowingly, and intentionally, during the deep depression years of 1930 and 1931, when agriculture was waging its losing battle for existence on account of low and ever lower prices, violated and flouted that provision of the rules and regulations promulgated pursuant to the authority of the statute which required him as a dealer to report the fact that he was short more than 500,000 bushels in any one future. [R. 481.]

Nevertheless, a proper understanding of this case requires some discussion of the facts. Before discussing the facts with respect to respondent's violations of the reporting requirements, the history and details of those requirements should first be noted.

RULES AND REGULATIONS REQUIRING REPORTS

Section 5 (b) of the Grain Futures Act requires as a condition of contract market designation that the governing board of a contract market shall

provide for the making and filing by any member of the contract market such reports as are required by the rules and regulations of the Secretary of Agriculture, in such manner and form and at such times as may be prescribed by the Secretary, showing the details and terms of all transactions entered into by such member, either in cash transactions consummated on such contract market or transactions for future delivery.

The first regulations, pursuant to the above authority of the Act, requiring reports by members of the Chicago Board of Trade were promulgated by the Secretary of Agriculture on June 22, 1923. These first regulations applied only to *clearing members* of contract markets—that is, members who also held memberships in such clearing associations as existed at the several contract markets. Section 2 of those regulations required clearing members to make daily reports showing separately for each kind of grain and each delivery month the following facts:

> (a) the net position at the beginning of the period covered by the report;
>
> (b) the quantity of grain purchased and the quantity of grain sold on such contracts during the period covered by the report;
>
> (c) the quantity of grain delivered and the quantity of grain received on such contracts during the period covered by the report;
>
> (d) the net position at the end of the period covered by the report;

(e) the aggregate of all "long" and the aggregate of all "short" accounts carried at the end of the period covered by the report by the clearing member for whom the report is made; and

(f) the net position, at the end of the period covered by the report, of each separate account carried by such clearing member, when such net position equals or exceeds such amount as shall be specified in a written notice from time to time by the Grain Futures Administration to such contract market. ~~This regulation required firms through which respondent traded to report his commitments when they equaled or exceeded 500,000 in any one future.~~ [R. 435.]

These regulations were amended by the Secretary on January 20, 1926, by the addition, immediately following subdivision (f), of a new subdivision which applied to *all members* of contract markets. The new subdivision thus added made respondent subject to the reporting requirement, inasmuch as respondent *is a member* of the Board of Trade but is *not a clearing member*. The new subdivision contains the regulation that respondent is charged with having violated. Its provisions follow:

> Whenever any member carries or has under his control more than one account with any clearing member of a contract market, and the total volume of such accounts is equal to or in excess of the amount fixed in accordance with subdivision (f) of section 2 of these Rules and Regulations,

then the total long and the total short position of all such accounts shall be reported and the names of all persons interested in such accounts shall be furnished to the Supervisor in Charge.

Whenever a member has under his control an amount of wheat, corn, oats, barley, rye, flax, or sorghum equaling or exceeding the amount fixed in accordance with subdivision (f) of section 2 of these Rules and Regulations and files for execution an order for the purchase or sale of any grain future such individual shall report that day to the Grain Futures Administration his total long and total short positions in the several futures in that grain in the market.

Each contract market shall make, or cause to be made, by its non-clearing members reports showing all or such part of the facts required to be shown by or for clearing members as the Grain Futures Administration shall from time to time specify.

Whenever any non-member of a contract market has under his control an amount of wheat, corn, oats, barley, rye, flax, or sorghum equaling or exceeding the amount fixed in accordance with subdivision (f) of section 2 of these Rules and Regulations, and files for execution an order for the purchase or sale of any grain future, such non-member shall comply with all the requirements and regulations applicable under the Rules and Regulations to members of the contract markets. [R. 437–438.]

Pursuant to the provisions of subdivision (f) of the rules and regulations, the Grain Futures Ad-

ministration in 1926 fixed 500,000 bushels in the case of wheat as the net position requiring reporting (R. 440). This same requirement was in effect in 1930 and 1931 (Ex. 358).

FACTS SHOWING RESPONDENT'S NOTICE OF THE REPORTING REQUIREMENTS

On February 6, 1926, Mr. L. A. Fitz, supervisor in charge of the Chicago office of the Grain Futures Administration, first called upon respondent by letter to report daily his transactions and open commitments in wheat futures on the Chicago Board of Trade when his net open commitments in any one future equaled or exceeded 500,000 bushels (Ex. 99, R. 130, 439).[2] With this letter Mr. Fitz enclosed a set of instruction blanks (Ex. 100, R. 130, 440), printed forms for his use (Ex. 101, R. 130, 440), and a "dummy" form filled out to indicate the manner in which the reports were to be made (Ex. 102, R. 130, 441).

Not having received any response from respondent by February 11, 1926, Mr. Fitz dispatched

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[2] In this letter to respondent, Mr. Fitz specifically said:

> After showing the name of the Chicago firm with whom you have an account, show your net position with that firm in the long and short column. In the last two columns on the right side of the blank show total amount long * * * and total amount short * * *.
>
> These reports should be made out promptly and correctly and mailed at the close of each business day * * *. [Ex. 99, R. 130, 439.]

another letter calling upon respondent to make reports as requested by the previous letter (Ex. 103, R. 131, 443). Soon thereafter respondent began to make reports, the first one coming from him on February 13, 1926 (R. 131). That respondent properly understood that he was required to report items of less than 500,000 bushels when his aggregate holdings exceeded 500,000 bushels is shown by the fact that in his very first report he indicated an item of 200,000 bushels of May wheat long with the Uhlmann Grain Co. He also reported two other items showing that he was 400,000 bushels long on May corn with each of two other firms (R. 131–132). Thus, in his very first report he included items less than 500,000 bushels where the total volume of his accounts was in excess of that figure.

During the year 1926 respondent made many reports to the Grain Futures Administration and continued so to do until February 25, 1927, when the reporting requirements were temporarily suspended (R. 133). This suspension of the reporting requirements was by way of experiment to determine to what extent, if any, the existence of the reporting requirements was deterring traders from engaging in market operations and to see whether the volume of trading would increase and better prices would result if traders were not required to report their larger holdings. The suspended regulations were restored on November 1, 1927. The result of this eight months' experiment

showed nothing either in the volume of trading or in the size of the open commitments to suggest any increase in speculative demand for grain traceable to the suspension of the regulations. The volume of trading in wheat futures during the period when the regulations were suspended was smaller than during the same period in either the preceding or the following year. As for prices, during the period of suspension prices in Chicago for both cash wheat and wheat futures reached the lowest figures recorded for over three years.[3]

Just prior to the suspension of the reporting requirements, respondent was still reporting items of less than 500,000 bushels with one firm (R. 133).

[3] The above information with respect to the suspension and its effects is taken from Senate Document No. 264, 70th Cong., 2nd Sess., pp. 1–3, and Senate Document No. 123, 71st Cong., 2nd Sess., p. 3. Both of these Senate documents consist of detailed reports by the Secretary of Agriculture, prepared in response to Senate Resolution No. 40, 70th Cong., which was a resolution calling upon the Secretary to investigate the effect of the suspension of the reporting requirements and to make a full and complete report thereof. The two Senate documents above referred to contain voluminous discussion and statistical studies covering the volume of trading, price trends, etc., during this period of suspension. The report of the Secretary contained in these Senate documents shows that the suspension was tried out experimentally because of the insistence of grain exchange interests that the effect of the reports was to keep speculators out of the market, restrict the volume of trading, and depress the prices of grain. The result of the suspension clearly demonstrated that the claims of the grain exchange interests that volume of trading had been restricted and prices depressed by the reporting requirements were wholly unfounded.

The reporting requirements were reinstated late in the fall of 1927 and respondent was advised of the reinstatement by letter dated November 4, 1927 (Ex. 271, R. 133, 443). Respondent's first report following the reinstatement of the reporting requirements was made for November 4, 1927, and covered an item of 135,000 bushels May corn long, thus indicating his continued understanding that the requirement contemplated reporting items of less than 500,000 bushels when the aggregate holdings exceeded that amount (R. 133–134). Thereafter, respondent continued to render reports in compliance with the rules and regulations at least up to and including September 22, 1928 (Exs. 272–357, R. 444).

ACCOUNTS IN WHICH RESPONDENT TRADED IN 1930 AND 1931

Attention presently will be called to respondent's failure to render any reports in 1930, his failure to render reports in 1931 on many days when his market position made him subject to the reporting requirement, and his rendition of certain false reports in 1931. First, however, his manner of trading during this two-year period, 1930–1931, should be observed. During these years he traded in 35 accounts distributed among the following commission firms at that time clearing members of the Board of Trade: Bartlett Frazier Company, Jackson Brothers, Boesel & Company, F. B. Keech

& Company, James Kidston & Company, C. D. Robbins & Company, Uhlmann Grain Company, and William J. Springer (Exs. 407, 409, R. 275–358).

Respondent's accounts with these firms may be considered in two groups. The first group includes eighteen accounts carried by these firms for respondent and designated by his initials or by a number or symbol. The second group includes seventeen accounts which were carried for respondent in the names of relatives and associates of respondent.[4]

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[4] A list of all of these accounts follows:

First Group Accounts carried for Arthur W. Cutten under his initials or a number or symbol	Second Group Accounts carried for Arthur W. Cutten under the names of relatives and associates
Bartlett Frazier Co.	
No. 7.	M. C.—Maude Cutten, Chicago, Ill.
No. 20.	Mrs. No. 7—Maude Cutten, Chicago, Ill.
	D. S.—D. Sandie, c/o Arthur W. Cutten, Chicago, Ill.
Clement, Curtis & Co.	
A. W. C.	M. C.—Maude Cutten, Chicago, Ill.
C. W. A.	R. C.—Ralph Cutten, Toronto, Ontario, Canada.
S. Spl.	
No. C–209 (209–C).	
No. 785.	

As to this second group, the transactions are tabulated in Exhibit 409 (R. 340–358). There can be no reasonable doubt that respondent controlled each of the accounts falling within the second group. There was evidence as to each of these accounts either that respondent gave all the orders

First Group—Con.	Second Group—Con.
Jackson Bros., Boesel & Co.	
No. 40.	R. C.—Ralph Cutten, Toronto, Ontario, Canada.
209–C.	211–C.—Ralph J. Cutten,
209–C Spl.	Toronto, Ontario, Canada.
210–C.	212–C.—Ralph J. Cutten,
L. F. C.	Toronto, Ontario, Canada.
	(Ex. 73, R. 429.)
F. B. Keech & Co.	
A. W. C.	M. C.—Maude B. Cutten,
L.	c/o Arthur W. Cutten, Chicago, Ill.
	E. M. L. C.—E. M. L. Cutten, c/o Arthur W. Cutten, Chicago, Ill.
	R. J. C.—Ralph J. Cutten, c/o Arthur W. Cutten, Chicago, Ill.
	97.—Ralph J. Cutten, c/o Arthur W. Cutten, Chicago, Ill.
James Kidston & Co.	
No. 8.	R. C. (59).—Ralph J. Cutten, 302 Church Street, Toronto, Canada.
C. D. Robbins & Co.	
	R. J. C.—Ralph J. Cutten.
	H. C.—H. Cutten.

and directions with respect to trading in them (R. 39, 50–51, 84–85, 97, 107–109); or that a profit was taken by respondent from them (Ex. 41, R. 42, 425); or that they were guaranteed by respondent (R. 50–51, 72, 80, 92, 99, 107); or that the rate of commission charged on the accounts was the rate charged to members of the Board of Trade even though the accounts were carried in the names of relatives or associates who were not members (R. 105, 125). There was also considerable evidence that certain of these accounts moved in unison with each other and with accounts in the first group.[5]

First Group—Con.	Second Group—Con.
Uhlmann Grain Co.	
57 Special.	57a Special. "c/o Arthur W. Cutten, 231 LaSalle St., Chicago, Ill."
Wm. J. Springer	
No. 20.	No. 150.—Mrs. Alys Springer. (R. 118.)
No. 30.	

Unless otherwise indicated all of these accounts are listed in Exhibits 407 and 409.

[5] Evidence of this kind was introduced as to the A. W. C. account and the Ralph J. Cutten account on the books of F. B. Keech & Company. On June 18, 1930, there was a sale of 200,000 bushels of December wheat for the A. W. C. account (Ex. 407, R. 314). On June 21, 1930, there was a sale of 400,000 bushels of December wheat for the R. J. C. account (Ex. 409, R. 353). Both accounts were short 400,000 bushels of December wheat on June 23, 1930. Both accounts remained short until July 9, 1930, on which date a purchase of 400,000 bushels for the R. J. C. account balanced it (Ex.

Exhibits 407 (R. 275–339) and 408 (R. 360–379) are analyses of the first group of accounts, i. e., those carried for respondent under his initials or under a number or symbol. In Exhibit 407 the accounts are arranged by futures, and the daily transactions in each future are set forth by firms and accounts, and the daily long or short position in each account is also shown. Exhibit 408 is a tabulation based upon Exhibit 407, showing the daily total transactions in a given future for all the accounts falling within the first group. Exhibits 409 (R. 340–358) and 410 (R. 380–399) contain

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409, R. 353) and a purchase of 200,000 bushels for the A. W. C. account reduced it to a position of 200,000 bushels short (Ex. 407, R. 314). There was a purchase of 400,000 bushels for the R. J. C. account on July 16 and a purchase of a like amount on July 17 (Ex. 409, R. 353). In the A. W. C. account there was a purchase of 200,000 bushels on July 15, and 200,000 more on July 17 (Ex. 407, R. 315). That gave both accounts a long position. Thus both accounts reversed from short to long at the same time and maintained a long position until July 28, 1930, on which date both were balanced by sales (Ex. 407, R. 315; Ex. 409, R. 353).

Another example of the same kind of evidence relates to the Maude and Arthur W. Cutten accounts with Clement, Curtis & Company. The A. W. C. account was short 200,000 bushels of May wheat on January 15, 1930 (Ex. 407, R. 292). On January 13, 1930, the M. C. account shows a sale of 200,000 bushels of May wheat (Ex. 409, R. 347). Both accounts maintained a short position of 200,000 bushels until January 16, 1930, on which date each had a sale of 200,000 bushels of May wheat, giving each a short position of 400,000 bushels (Ex. 407, R. 292; Ex. 409, R. 347). On February 6, 1930, each had a purchase of 300,000 bushels of May wheat (Ex. 407, R. 292; Ex. 409, R. 347). On February 7, 1930,

similar analyses of the accounts falling within the second group, i. e., those carried in the names of relatives and friends. Exhibit 411 (R. 400–419) is a summary by days of the transactions in wheat futures in both groups of accounts. It is based on Exhibits 407–410.

Appendices A, B, and C to this brief, *infra*, pages 123–136 are tabulations based on these ex-

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each account was balanced by a purchase (Ex. 407, R. 292; Ex. 409, R. 347).

Still another example of the same kind is found in the Maude Cutten and D. J. Sandie accounts on the books of Bartlett Frazier Company. The Secretary of the firm testified that the address of the D. J. Sandie account was in care of Arthur Cutten; that all purchases and sales statements and confirmations were sent to Mr. Cutten; that he did not know a person by the name of D. J. Sandie, had never seen him or talked to him and never had any communications from him (R. 80). On March 6, 1930, the M. C. account had a sale of 200,000 bushels of July wheat (Ex. 409, R. 342). On the very same date the D. S. account had a sale of 400,000 bushels of July wheat (Ex. 409, R. 342). The two accounts remained short 200,000 bushels and 400,000 bushels of July wheat, respectively, until April 2, 1930, on which date both accounts simultaneously reversed their positions by a purchase of 300,000 bushels for the M. C. account and the purchase of 600,000 bushels for the D. S. account. As a result, the M. C. account had a long position of 100,000 bushels and the D. S. account a long position of 200,000 bushels (Ex. 409, R. 343). During this same period No. 20 account had been short 200,000 bushels of July wheat from March 12 to April 1, 1930, except for one day when it was short 400,000 bushels. On April 2, 1930, a purchase of 475,000 bushels was entered in No. 20 account reversing its position to a long position of 275,000 bushels (Ex. 407, R. 284). On the same date, April 2, 1930, a purchase of 125,000 bushels of July wheat was entered in No. 7 account (Ex. 407, R. 284). The M. C., D. S., 7 and 20 accounts remained long until April 12, 1930 (Ex. 407, R. 284; Ex. 409, R. 343).

hibits. Appendix A shows respondent's open commitments and transactions in wheat futures in both groups of accounts on certain typical days in 1930 (a year in which he made no reports whatsoever) when his commitments exceeded 500,000 bushels in a given future. Appendix B shows respondent's open commitments and transactions in wheat futures in both groups of accounts on certain typical days in 1931 when his commitments exceeded 500,000 bushels in a given future and on which he made no reports. Appendix C is a comparative tabulation showing respondent's commitments and transactions in wheat futures in both groups of accounts on certain typical days in 1931 and the reports he rendered to the Grain Futures Administration for those days.

FAILURE OF RESPONDENT TO RENDER ANY REPORTS IN 1930

Although the regulations, set out at pp. 10–13 *supra,* requiring reports were in effect in 1930, and although respondent was throughout 1930 carrying on transactions in the above accounts in sufficient volume to require reports for most of the trading days, and although respondent was fully cognizant of the reporting requirements and their application, respondent in fact did not make a single report to the Grain Futures Administration during that year (R. 134). The books and records of the commission firms mentioned above show that on more than 140 days of that year respondent had open commitments in a given wheat future, in the

first group of accounts above, equal to or in excess of 500,000 bushels (Ex. 408, R. 360–369).

For example, on June 23, 1930, in the first group of accounts respondent had open short commitments of 3,725,000 bushels (R. 364). This total was divided among his various accounts as follows. He was short 400,000 bushels of July wheat in the following accounts:

	Account	Exhibit	Amount short in bushels
Clement, Curtis & Co	A. W. C.	These commitments which are shown in original Exhibit 407 are not included in the part of Exhibit 407 printed in the record.	200,000
F. B. Keech & Co	A. W. C.		200,000
			400,000

He was short 1,775,000 bushels of September wheat in the following accounts:

	Account	Exhibit	Amount short in bushels
Bartlett Frazier Co	No. 7	(Ex. 407, R. 286)	495,000
Bartlett Frazier Co	No. 20	(" " " 286)	495,000
F. B. Keech & Co	A. W. C.	(" " " 314)	410,000
James Kidston & Co	No. 8	(" " " 323)	275,000
Uhlmann Grain Co	57 Spl	(" " " 334)	100,000
			1,775,000

He was short 1,550,000 bushels of December wheat in the following accounts:

	Account	Exhibit	Amount short in bushels
Bartlett Frazier Co	No. 7	(Ex. 407, R. 286)	200,000
Clement, Curtis & Co	A. W. C.	(" " " 293)	400,000
Jackson Bros., Boesel & Co	C-209	(" " " 305)	250,000
Jackson Bros., Boesel & Co	L. F. C.	(" " " 305)	200,000
F. B. Keech & Co	A. W. C.	(" " " 314)	400,000
Uhlmann Grain Co	57 Spl	(" " " 334)	100,000
			1,550,000

On that date, June 23, 1930, respondent had open short commitments in all wheat futures in various accounts with Bartlett Frazier Company totaling 1,190,000 bushels (R. 286). He had open short commitments in all wheat futures with F. B. Keech & Company on that date amounting to 810,000 bushels (R. 314). No report was made on any of these accounts for June 23, 1930.

On the same date, in addition to the open short commitments in wheat futures in the first group of accounts, respondent had in the second group of accounts—those carried in the names of relatives and associates—open short commitments in September wheat amounting to 1,900,000 bushels distributed as follows:

	Account	Exhibit	Amount short in bushels
Bartlett Frazier Co	M. C	(Ex. 409, R. 345)	410,000
Bartlett Frazier Co	D. S	(" " " 345)	600,000
Clement, Curtis & Co	M. C	(" " " 348)	200,000
Jackson, Bros., Boesel & Co	R. C	(" " " 350)	200,000
F. B. Keech & Co	M. C	(" " " 352)	490,000
			1,900,000

The open short commitments in December wheat on the same date in the second group of accounts amounted to 1,900,000 bushels, distributed as follows:

	Account	Exhibit	Amount short in bushels
Bartlett Frazier Co	D. S	(Ex. 409, R. 345)	600,000
Clement, Curtis & Co	M. C	(" " " 348)	400,000
Jackson Bros., Boesel & Co	R. C	(" " " 350)	300,000
F. B. Keech & Co	R. J. C	(" " " 353)	400,000
F. B. Keech & Co	M. C	(" " " 353)	200,000
			1,900,000

On that date, June 23, 1930, all respondent's accounts with Bartlett Frazier Company combined were short 2,800,000 bushels of wheat. In all the accounts in all futures combined, including those in both groups of accounts, respondent was short on June 23, 1930, a total of 7,525,000 bushels of wheat (Ex. 411, R. 404). Not one of these commitments was reported either by respondent or by the firms involved to the Grain Futures Administration (R. 134, Ex. 402, R. 445).

For other examples of respondent's failure to report in 1930, the Court is referred to Appendix A, pp. 123–126, *infra*.

FAILURE OF RESPONDENT TO RENDER REPORTS IN 1931

In 1931 respondent rendered some reports (all of which petitioners contend were false, as will later appear, pp. 28–30, *infra*), but there were many days when respondent did not render any reports, although his transactions and his open commitments in a certain wheat future equaled or exceeded 500,000 bushels (Ex. 411, R. 410–419; Ex. 362–401, R. 445). There were at least 110 days during the year 1931 when respondent should have made reports but failed to do so (Ex. 411, R. 410–419; Ex. 362–401, R. 445). For example, on February 9, respondent reported that he was short 150,000 bushels of July wheat (Ex. 371, R. 445). On that date, however, he was in fact short in all accounts, 2,405,000 bushels of July wheat and 100,000 bushels of May wheat, or a total of 2,505,000 bushels (Ex. 411, R. 411).

April 10, 1931, is another example of a day during this period on which respondent failed to report. On that date, in all accounts, he was short a total of 6,770,000 bushels of wheat futures which he did not report (Ex. 411, R. 412). F. B. Keech & Co. was the only firm which made a report for that date and its report showed a short position of 1,350,000 bushels in all futures (Ex. 402). These commitments were distributed as follows. He was short 3,270,000 bushels of September wheat in the following accounts in the first group:

	Account	Exhibit	Amount short in bushels
Bartlett Frazier Co	No. 7	(Ex. 407, R. 289)	250,000
Bartlett Frazier Co	No. 20	(" " " 289)	350,000
Clement, Curtis & Co	A. W. C.	(" " " 296)	370,000
Jackson Bros., Boesel & Co	No. 40	(" " " 308)	450,000
Jackson Bros., Boesel & Co	C-209	(" " " 308)	250,000
F. B. Keech & Co	A. W. C.	(" " " 317)	545,000
F. B. Keech & Co	L	(" " " 317)	155,000
James Kidston & Co	No. 8	(" " " 325)	400,000
Wm. J. Springer	No. 20	(" " " 330)	100,000
Uhlmann Grain Co	57 Spl	(" " " 337)	400,000
			3,270,000

On the same date in the following accounts in the first group, respondent was short 2,925,000 bushels of July wheat:

	Account	Exhibit	Amount short in bushels
Bartlett Frazier Co	No. 7	(Ex. 407, R. 288)	300,000
Bartlett Frazier Co	No. 20	(" " " 288)	100,000
Clement, Curtis & Co	A. W. C.	(" " " 296)	490,000
Jackson Bros., Boesel & Co	No. 40	(" " " 308)	420,000
Jackson Bros., Boesel & Co	C-209	(" " " 308)	465,000
F. B. Keech & Co	A. W. C.	(" " " 317)	450,000
F. B. Keech & Co	L	(" " " 317)	200,000
James Kidston & Co	No. 8	(" " " 325)	300,000
Uhlmann Grain Co	57 Spl	(" " " 336)	200,000
			2,925,000

On this date respondent was also short 100,000 bushels of December wheat in account C. W. A. with Clement, Curtis & Company,[6] and the accounts in the second group were short 475,000 bushels of July wheat in the following accounts:

	Account	Exhibit	Amount short in bushels
Jackson Bros., Boesel & Co	R. C	(Ex. 409, R. 351)	165,000
Uhlmann Grain Co	57a Spl	(" " " 357)	310,000
			475,000

On this same date, April 10, 1931, respondent was also short a total of 600,000 bushels of September wheat and 400,000 bushels of July wheat in accounts in the first group that were carried with the firm of Bartlett Frazier Company (Ex. 407, R. 288, 289). Neither respondent nor Bartlett Frazier Company reported his position in the market to the Grain Futures Administration (R. 136–137; Ex. 402, R. 445). He was short with Jackson Bros., Boesel & Company in accounts in the first group a total of 700,000 bushels of September wheat, and 885,000 bushels of July wheat (Ex. 407, R. 308). Neither respondent nor Jackson Bros., Boesel & Company reported these commitments to the Grain Futures Administration (R. 137; Ex. 402, R. 445).

[6] This commitment which was shown by the original Exhibit 407 is not included in the part of Exhibit 407 printed in the record.

For additional examples of respondent's failure to report in 1931, the Court is referred to Appendix B, pp. 127–131, *infra*.

FALSE REPORTS RENDERED BY RESPONDENT IN 1931

Early in January 1931 the Grain Futures Administration received reports from a commission firm indicating that respondent had open commitments in one of the wheat futures equal to or in excess of 500,000 bushels. He had not reported these commitments (R. 134). On January 6, 1931, after this information had been received, Mr Fitz, the Grain Exchange Supervisor, directed a letter to respondent requesting him to report his open commitments in wheat futures when they equaled or exceeded 500,000 bushels. A set of blanks was furnished him for that purpose with instructions that an additional supply could be obtained at the office (Ex. 358, R. 134, 444). Thereafter he made reports for January 5, 6, and 7, 1931 (Ex. 359–361, R. 444). In these reports he reported only one grain. Mr. Fitz again wrote respondent a letter under date of January 15, 1931, calling his attention to the necessity of reporting all grains (Ex. 361–A, R. 134–135, 444). In this letter Mr. Fitz said:

> Apparently you have misunderstood the meaning of this call for report and have simply reported on the one grain and future in which you made a transaction on January 7th. This call was made for complete re-

port upon your Chicago grain futures transactions and at that time our records show you had open interests in other grain than the July wheat.

Will you kindly send a corrected report for January 7th and keep in mind the requirement regarding additional reports.

Thereafter a further report for January 7, 1931, was received from respondent (Ex. 362, R. 445) and in the year 1931 he continued to make scattered reports to the Grain Futures Administration (Ex. 362–401, R. 445). Petitioners contend that each and every one of these reports was false. In Appendix C, pp. 132–136, *infra*, a number of the reports made by respondent in 1931 are listed and contrasted with his actual position on the market on the days for which the reports were made. Three examples of the discrepancy between these reports and respondent's actual market position will be given here.

On January 5, 1931, respondent reported that he was short 600,000 bushels of July wheat (Ex. 359, R. 444). In fact, on that date in accounts in the first group he was short 1,570,000 bushels of July wheat distributed as follows:

	Account	Exhibit	Amount short in bushels
Bartlett Frazier Co.	20	(Ex. 407, R. 288)	100,000
Clement, Curtis & Co.	A. W. C.	(" " 295)	600,000
Jackson Bros., Boesel & Co.	No. 40	(" " 306)	175,000
F. B. Keech & Co.	A. W. C.	(" " 316)	200,000
Uhlmann Grain Co.	57	(" " 335)	495,000
			1,570,000

In addition to the above commitments, account 57a Special with the Uhlmann Grain Company—an account in the second group of accounts—was also short 495,000 bushels (Ex. 409, R. 356).

On March 14, 1931, respondent reported that he had no commitments, either long or short, in wheat futures (Ex. 373, R. 445). As a matter of fact on that date he was actually short 3,995,000 bushels in accounts in the first group (Ex. 408, R. 372) and 375,000 bushels short in accounts in the second group (Ex. 410, R. 391), a total of 4,370,000 bushels (Ex. 411, R. 411).

Again on November 20, 1931, respondent reported that he was short 100,000 bushels of May wheat (Ex. 376, R. 445). In fact, on that date in accounts in the first group he was short 870,000 bushels of May wheat (Ex. 408, R. 378), and in accounts in the second group he was short 400,000 bushels (Ex. 410, R. 398).

EVIDENCE WITH RESPECT TO RESPONDENT'S SPLITTING OF TRANSACTIONS

There is considerable evidence in the record indicating a deliberate effort by respondent to split and divide transactions among his various accounts so as to keep each account below 500,000 bushels.

For example, Exhibit 407 (R. 286) shows that throughout May and June 1930, accounts No. 7 and No. 20 with Bartlett Frazier Company were together short 600,000 and more bushels of September wheat. The transactions were so divided

that neither account ever exceeded 495,000 bushels. Likewise, Exhibit 407 (R. 336) and Exhibit 409 (R. 357) show that although Accounts 57 Special and 57a Special with the Uhlmann Grain Company were together short in excess of 500,000 bushels of July wheat throughout most of March 1931, the transactions were so divided between the two accounts as to keep them both under 500,000 bushels. The same exhibits show that although from December 10 to December 29, 1931, the same two accounts were together short in excess of approximately 700,000 bushels of May wheat, the trades were divided so as to keep each account under 500,000 bushels (R. 339, 358).

Furthermore, there is evidence that to achieve this result changes were made in the books and records of the commission firms. For example, on December 10, 1930, account 57 Special with the Uhlmann Grain Company was short 300,000 bushels of July wheat (Ex. 407, R. 335). On December 11, 1930, there appeared upon the street book of the Uhlmann Grain Company a sale of 200,000 bushels of July wheat for account 57 Special. Had all of the 200,000 bushels of July wheat been posted to the 57 Special account on the grain ledger the ledger would have shown that account to have been 500,000 bushels short. This was not done. Instead 190,000 bushels were posted to 57 Special account (Ex. 407, R. 335), giving it a short position of 490,000, and a balance of 10,000 bushels was entered in 57a Special account, which

appeared on that date for the first time (Ex. 409, R. 356).

The street book of the Uhlmann Grain Company shows a purchase on January 14, 1931, of 800,000 bushels of July wheat for 57 Special account (Ex. 7, R. 35, 36, 421). With the use of a blue pencil the words "57a Special" were inserted on certain lines of the street book and, on other lines, the letter "a" was inserted between the figures "57" and the word "Special." On the grain ledger this purchase is divided, 495,000 bushels for 57 Special account and 305,000 bushels for 57a Special account (Ex. 10, R. 35, 36, 421).

On July 1, 1931, the 57 Special account was short 400,000 bushels of December wheat (Ex. 407, R. 338). On that date respondent directed the Uhlmann Grain Company to sell 200,000 bushels of December wheat and specifically directed that 95,000 bushels only be placed in the 57 Special account, giving it a total short position of only 495,000 bushels (Ex. 407, R. 338, 39, 54). The balance of 105,000 bushels he directed to be placed in the 57a Special account (Ex. 409, R. 358).

On June 21, 1930, the M. C. account with F. B. Keech & Company was short 500,000 bushels of September wheat (Ex. 409, R. 352). On June 23, 1930, 10,000 bushels of September wheat were arbitrarily transferred from the M. C. account to the Arthur W. Cutten account (Exs. 32, 34, R. 69, 424). On July 28, 1930, the street book of F. B. Keech &

Company shows a sale of 600,000 bushels of December wheat, 435,000 bushels for the A. W. C. account and 165,000 bushels for the R. J. C. account (Ex. 19, R. 69, 422). On the grain ledger 200,000 bushels were posted to the A. W. C. account and 400,000 bushels were posted in the R. J. C. account (Ex. 31, R. 69, 424), keeping both accounts under 500,000 bushels. Again on October 29, 1930, the street book of F. B. Keech & Company shows a sale of 200,000 bushels of December wheat for the A. W. C. account (Ex. 19, R. 69, 422). On the grain ledger all of this wheat was entered in the L. account (Ex. 30, R. 69, 424).

There are similar examples in the accounts with Jackson Bros., Boesel & Co. There was only one instance in 1930 or 1931 when any one of those accounts was permitted to equal or exceed 500,000 bushels in any one future (Ex. 407, R. 304–312; Ex. 409, R. 350–351).

The same kind of evidence was presented with respect to the accounts with Bartlett Frazier Company. The books of that firm contained a "Mrs. No. 7" account. During the years 1930 and 1931 this account had only one transaction (Ex. 409). That transaction took place on February 4, 1930. On that date there appeared upon the street book a sale of 500,000 bushels of July wheat for account No. 20 (Ex. 43, R. 83, 426). Only 495,000 bushels of this were posted on the grain ledger to account No. 20 and, by the direction of respondent, 5,000 bushels were posted to the account of Mrs. No. 7,

which appeared on that date for the first time (Ex. 51, R. 83–84, 427; Ex. 409, R. 342). The effect of this transaction was to keep account No. 20 below 500,000 bushels.

The accounts with William J. Springer were similarly handled. For example, page 190 of the street book of that firm shows a purchase of 200,000 bushels of May wheat for account No. 20 on November 5, 1931 (Ex. 95, R. 118, 432). If the 200,000 bushels had been entered in the grain ledger to the account of No. 20, that account would have been long in excess of 500,000 bushels. In fact, only 25,000 bushels were posted to account No. 20 and 175,000 bushels were posted to account No. 30 (R. 118–120, Ex. 407; R. 332).

OTHER EVIDENCE OF RESPONDENT'S INTENTION TO CONCEAL HIS DEALINGS

An exchange of telegrams between respondent and Secretary of Agriculture Arthur M. Hyde in February 1930 further shows that respondent was deliberately concealing his market transactions. On February 23, 1930, Secretary Hyde sent the following telegram to respondent (Ex. 404, R. 185, 447):

> It is reported to me that you have been operating on the bear side of the grain market and that these operations have contributed to the collapse of the market Stop

> I have no right or authority to suggest any course to any business man in his own business but just in the public interest if you could abandon such a course it would help many thousands of people in a time of distress Stop If the report is not true then disregard my anxiety in the matter.
>
> (sgd) Arthur M. Hyde,
> Secretary of Agriculture.

Respondent replied on February 25, 1930, by telegram to Secretary Hyde as follows (Ex. 405, R. 185–186, 447):

> Your wire received and your information misleading. I have not been very active in the market. My activity for last two weeks consisted of selling about four hundred privileges each way. I don't think I have sold a bushel of wheat during that time except to protect the trades put.
>
> (sgd.) Arthur W. Cutten.

The very day on which respondent sent the above telegram, February 25, 1930, his aggregate position in wheat futures in all accounts controlled by him was 3,760,000 bushels short, and on that very day he had sold 395,000 bushels of the May wheat future (R. 401). Curiously, on the next day, February 26, 1930, respondent purchased 3,460,000 bushels in the May and July futures, thereby reducing in a single day his net short position in all wheat futures to 300,000 bushels (R. 401). Two weeks later, however, he again had a total net short position in all wheat futures of 2,700,000 bushels (R.

401). None of these transactions was reported. Respondent's statement in his telegram that the only wheat sold during the preceding two weeks was to protect the trades put is not consistent with the fact that during the preceding two weeks' period he had increased his net short position on the market by more than half a million bushels (R. 401).

MAGNITUDE OF THE INVESTIGATION REQUIRED TO UNCOVER RESPONDENT'S TRANSACTIONS WHICH HE HAD FAILED TO REPORT OR REPORTED INACCURATELY

Although a few sporadic instances of respondent's failure to report had come to the attention of Mr. Fitz, the Grain Exchange Supervisor, during the two-year period under consideration,[7] it was

[7] Respondent, before the Commission and in the Circuit Court of Appeals contended that the Grain Futures Administration had notice in February 1930 that respondent was not properly reporting, and that nothing was done about it thus indicating the acquiescence of the Grain Futures Administration in respondent's conduct. Mr. Fitz did testify that in February 1930 he had notice that respondent was not reporting certain accounts in excess of 500,000 bushels carried with Clement, Curtis & Co. and James Kidston & Co. (R. 149). The fact, however, that the Grain Futures Administration did not proceed immediately to use its full power to bar respondent from further trading on account of these relatively minor violations cannot be said to have the effect of condoning all that respondent subsequently did. Nor can it fairly be argued that these isolated violations which came to Mr. Fitz's attention early in 1930 put him on notice that respondent would thereafter be a consistent and flagrant violator of the reporting requirements for a period of nearly two years.

not until November or December 1931 that the Grain Futures Administration had reason to believe that substantial violations had been committed by respondent. Mr. Fitz testified (R. 140–141):

> We began to find out that there were additional accounts carried under various code designations that apparently were under his control along in November or December 1931, but that was just an inkling of the fact that everything had not been properly reported, and we then issued a call for some back reports and began some checking up, and owing to the confusion in which we found a lot of these records, the many errors, cross checking, tracing of the things through the financial records, and the re-identification of code accounts, it was not finally completed until March 1934. In the fall of 1931 reports were being made to us by brokers, by firms, grain firms, but the information that came to us was not completed until 1934, in our check-up on the final situation, in running down all of these accounts, rechecking and getting dates straightened out, contradictions run down.

Respondent also contended before the Commission and in the Circuit Court of Appeals that if the Grain Futures Administration had merely warned respondent in February 1930 and called his attention to his violations of the reporting requirements, he would immediately have conformed his conduct to the law. But the telegram from the Secretary of Agriculture to respondent on February 23, 1930, should have been a sufficient warning.

Mr. Fitz further testified (R. 152):

> I may say that we were using these reports for the purpose of trying to keep in touch with the market situation, and we assumed that we were getting practically the standing in the market, and I never dreamed for a moment that there was a splitting of accounts and carrying of accounts under the names of various individuals and the situation existing which subsequently developed.
>
> * * * * *
>
> * * * we occasionally examined books and records, but if we went over to one of these grain houses and examined the records of Mr. Cutten's account and found that it was being properly reported, unless we discovered some clue that there was an additional account carried in the name of other people, and that the proceeds of the accounts were subsequently transferred into Mr. Cutten's account, we had a perfect right to believe and assume that the books showed the true status.

Certainly Mr. Fitz had no reason to suspect the magnitude of respondent's operations at the time they were being committed.

So far as the reports of the commission houses showed, Mr. Fitz had no reason to believe in 1930–1931 that there was anything dangerous in the position which respondent occupied on the market. However, after the investigation was instituted late in 1931, the complexities of the situation com-

menced to develop. Mr. Fitz further testified (R. 173):

> As this situation developed, with all its ramifications, it was much more serious than just a simple failure to render a report covering any one day or two days. One of the outstanding things was the failure to include reports covering certain grains and futures which were within the reporting requirements but which were not included in the reports rendered. I began to get the details of it shortly before this letter of March 15th. I say "shortly." I think I had some idea of it around the first of 1932; perhaps some time after that. I did not have the complete picture at all until some time later. The seriousness of it was that his reports, as they were being rendered, in certain instances did not include all of his holdings.

The nature of the task which the Grain Futures Administration had to perform in tracing concealed market operations is indicated by the circumstance that the purchase of each 5,000 bushels of grain is reported by a separate entry in the street book of the commission firm making the purchase. (R. 34). From time to time respondent's commitments in all grain futures amounted to millions of bushels. For example, on June 23, 1930, respondent was short 7,525,000 bushels of wheat (Ex. 411, R. 404). To discover these commitments for this single day, it was therefore nec-

essary to examine upwards to 1,500 entries on street books. Moreover, the street book was not the only book of account involved. There were also orders, grain ledgers, confirmations, purchase and sale statements, and financial ledgers, all of which had to be examined.

THE THEORY OF THE COMMISSION'S FINDINGS

In the Circuit Court of Appeals there was no serious dispute between the parties as to most of the ultimate facts involved in this proceeding. The facts with respect to respondent's failure to render any reports in 1930, his failure to render reports in 1931 on many days when, on account of his market position, he was subject to the reporting requirement, his rendition of many false reports in 1931, the splitting of accounts by respondent, and the division of them among various commission houses—these and practically all of the other essential ultimate facts in this case are established beyond dispute.

The only factual issue which respondent contested in the Circuit Court of Appeals was the inference which the Commission drew from these facts. The Commission found as a fact that respondent had attempted to manipulate the price of grain (R. 465). Respondent contended in the Circuit Court of Appeals that this finding is contrary to the evidence and is not supported by the weight of the evidence. While the Commission took the

position that the finding of attempt to manipulate is supported by substantial evidence and by the weight of the evidence and that no other reasonable conclusion can be drawn from the record as a whole, it also took the position that sufficiency of the finding as to the attempt to manipulate is not essential to the validity of the order, and that the order can stand alone upon the findings of failure to report as required by the lawful regulations made under the Grain Futures Act. It is submitted that the findings of failure to report as required by the regulations and the making of false reports is sufficient bottom for the Commission's order, irrespective of whether the finding as to attempt to manipulate is sufficiently supported. The Circuit Court of Appeals, however, apparently found no fault with the Commission's findings in any respect. The case therefore comes before this Court upon a practically undisputed fact situation as to which the Circuit Court of Appeals has held that the Commission's findings are "amply" and "persuasively" supported by the evidence (R. 481).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals for the Seventh Circuit erred:

(1) In holding that under Section 6 (b) of the Grain Futures Act the Commission had no power to order all contract markets to deny respondent

trading privileges because of violations of the Act committed more than two years prior to the institution of proceedings against him; and

(2) In reversing the order of the Commission.

SUMMARY OF ARGUMENT

I

The construction given Section 6 (b) by the Circuit Court of Appeals renders that Section impractical and ineffective as a means of dealing with persons who violate the provisions of the Grain Futures Act or attempt to manipulate the market price of grain. The Circuit Court of Appeals recognized that its construction of Section 6 (b) eviscerates that Section and leaves the Commission virtually powerless to prevent violations of the reporting requirements by traders, and otherwise very severely curtails the power of the Commission to prevent manipulation of the price of grain.

The requirements of reports from individual traders is of the utmost importance in the statutory scheme set up by the Grain Futures Act. Full and complete knowledge as to the activities of individual traders is essential if the regulatory authority is effectively to prevent manipulation of the market price.

Because of the nature of the reporting, it is virtually impossible to apprehend a trader in the act of violating the reporting requirements. A

violation of those requirements occurs and falls into the class of past transactions at one and the same moment. Apprehension cannot be contemporaneous with commission. Under the construction for which respondent contends, there is no way in which the Commission can proceed against one who violates the reporting requirements. If that construction is adopted, Section 6 (b), as the Court below said, will be rendered "sterile." This result cannot be escaped by contending that Section 6 (b) applies to some past offenses and not to others. In any event, if Section 6 (b) applies to any past offenses it must apply to those committed by respondent, because the Commission proceeded in this case as promptly as possible consonant with a full investigation of the secret and complicated transactions carried on by respondent.

The procedural requirements of Section 6 (b) are inconsistent with the construction urged by respondent and adopted by the Circuit Court of Appeals. Those requirements make summary action impractical. If the jurisdiction of the Commission to enter an order under Section 6 (b) were dependent upon final action sufficiently prompt to affect a trader before a violation was completed, it would be utterly impossible to observe the procedural requirements which the law establishes. There is no merit in the argument that the Commission's power under Section 6 (b) is coincident with the existence or present threat of wrong

doing and ceases with the termination of such wrong doing or threat. If the power of the Commission were so limited, then the term of suspension which the Commission might impose would likewise be limited because the preventative purpose would not be furthered by prolonging suspension beyond the present existence of threat or violation. But the continuation of a violation could not in any event last beyond the moment at which a suspension order becomes effective. If respondent's contentions are sound, every order would become illegal the moment it became effective because the order would then and thereafter relate to an offense which the order itself had terminated and relegated to the past. No construction should be adopted which thus devitalizes the statute and makes a mockery of legislation designed to be remedial.

The amount of time necessary to dispose of violations is not always within the Commission's control. In the instant case, investigation was begun as soon as the Grain Futures Administration had reasonable cause to suspect the existence of respondent's illegal conduct. A cursory survey of the documentary evidence in this case shows that a long period of time was necessarily consumed in uncovering involved transactions deliberately designed and executed to avoid detection. The construction of Section 6 (b) urged by the respondent

puts a premium on craftiness by permitting successful concealment to thwart the Commission's authority.

II

Section 6 (b) should be construed so as to give it a reasonable and practical meaning. The question here is not as to the balance of convenience but whether the language of Section 6 (b) shall be given meaning or shall be robbed of all significance. This Court has not hesitated to construe the words of a statute in such a manner as to avoid an absurd and impractical result and to give the statute meaning. It has limited the scope of statutes when a literal reading of their words would have led to an absurd or unreasonable consequence, and it has also extended the meaning of statutory language to avoid unreasonable results. This Court has also given statutes a broader application than the strict construction of the tense of a verb would warrant in order to accomplish the true intent of the statute.

In this connection it is significant that the Grain Futures Act does not provide for cease and desist orders against those who violate the reporting requirements. If all that Congress intended was to give the Commission summary powers to act against violators caught in the commission of an offense, it would appear that the Commission

would have been empowered to enter cease and desist orders which would have had the practical effect of stopping present violations. The fact that the Grain Futures Act does not provide a criminal punishment for violation of the reporting requirements in no way tends to prove that Section 6 (b) was not intended to be effective as a means of barring from trading privileges those who violate the Act or attempt to manipulate the market price of grain.

III

The fact that Section 6 (a) uses the words "has failed or is failing" whereas Section 6 (b) uses the words "is violating" and "is attempting to manipulate" is not conclusive of the meaning of Section 6 (b). If the words of Sections 6 (a) and 6 (b) are viewed realistically and in the light of their legislative history, the difference in language has no significance. It cannot be assumed that the same draftsman used different words for the purpose of achieving a different result. Sections 6 (a) and 6 (b) were drawn up by different draftsmen and the difference in language was inadvertent and not deliberate and premeditated. In construing statutes this Court frequently has given the same meaning to different words used in different sections of the statute when it was necessary to do so in order to achieve a reasonable result. It is

unreasonable to assume that Congress intended to achieve one result in Section 6 (a) with respect to contract markets and another result in Section 6 (b) with respect to individual traders. Both Sections were designed to prevent the same evil—the manipulation of the market price of grain—and it seems clear that Congress intended that the two Sections should be given a similar effect.

IV

Section 6 (b) as construed by petitioners is constitutional. Respondent's contention that Section 6 (b) as construed by petitioners is unconstitutional rests upon the unwarranted assumption that so construed the Section would be a criminal statute. This is plainly not the case. Section 6 (b) does not provide for a criminal penalty but merely for suspension of the trading privileges of those traders who do not conform to the regulations imposed by the Act. Respondent has no constitutional right to trading privileges on the Board of Trade unless he complies with the conditions imposed by law. It is properly within the function of a regulatory body to determine whether conditions annexed to the enjoyment of privileges permitted by law have been met. Section 6 (b) does not violate the jury trial provisions of the Sixth and Seventh Amendments to the Constitution. The provisions of the Sixth Amend-

ment apply only to proceedings technically criminal in nature and the guarantee of jury trial made by the Seventh Amendment relates only to suits of the type which could be maintained at common law at the time the Amendment was adopted. It is not material that the Act does not provide for the licensing of individual traders. Respondent's constitutional right to trade in grain futures on a contract market can be no greater than the constitutional right of the contract market to remain in operation. Undoubtedly, the designation of the contract market could constitutionally be suspended by the Commission. Respondent cannot contend that he has constitutional rights on a contract market which are superior to those of the contract market itself.

The Commission as constituted is a constitutional tribunal. It is immaterial that the Secretary is a member of the Commission and also institutes the proceedings as complainant.

The Grain Futures Act sufficiently defines the phrase "is attempting to manipulate the market price of grain." In any event, the order involved herein does not depend for its validity upon the finding that respondent attempted to manipulate the pric of grain. The order is justified by findings that respondent failed to report as required by the Act and the regulations made thereunder and that he rendered false reports.

ARGUMENT

I

THE CONSTRUCTION GIVEN SECTION 6 (b) BY THE CIRCUIT COURT OF APPEALS RENDERS IT IMPRACTICAL AND INEFFECTIVE AS A MEANS OF DEALING WITH THOSE PERSONS WHO VIOLATE ANY OF THE PROVISIONS OF THE ACT OR ATTEMPT TO MANIPULATE THE MARKET PRICE OF GRAIN

The issue here presented is what interpretation shall be given to the words "is violating" and "is manipulating" in Section 6 (b) of the Grain Futures Act. Petitioners contend that these words, properly read, cover the violations of the Act which respondent clearly committed and that the facts in the present case bring it within the jurisdiction of the Commission under Section 6 (b). Respondent contends on the other hand that these words permit the Commission to act only if the violation is apprehended *flagrante delicto,* and the Circuit Court of Appeals adopted this interpretation.

The violations of the Act with which respondent is charged are of a type which necessarily involve and thrive upon concealment. Violations of the reporting requirements, by their very nature, cannot be detected during the course of commission. The statement of facts in this case shows that respondent's method of trading through numerous accounts carried with different firms under secret numbers or designations or in the names of persons other than himself, promoted secrecy and

hid from the sight of the Grain Futures Administration transactions and net open positions at times aggregating millions of bushels of grain. His splitting of trades among numerous accounts, carefully keeping in many instances the net open position in any one account just below the reporting requirement, further prevented the ramifications of his trading from being known.

Affirmative deception of duly constituted governmental authority was also practiced, as is evidenced by respondent's telegram to Secretary Hyde stating that respondent's activities in the market were negligible when in fact he was occupying a total net short position of 3,760,000 bushels and was almost daily increasing his net short *open* position by more than 100,000 bushels, and on the very day of sending the telegram was selling 395,000 bushels of May wheat (R. 185–186, 401).

Not only did respondent himself fail to report his transactions and net open positions when they were of sufficient volume to bring him within the reporting requirement, but the firms with which he carried accounts also failed to make reports of his transactions although required to do so by the lawful regulations.

On this state of facts, it is little wonder that for nearly two years respondent engaged in these wholesale violations without the Grain Futures Administration having any reason to suspect that his unreported operations were so involved and

substantial that they could not be explained as mere casual inadvertences.

Discoveries of some reporting irregularities, however, in November and December 1931 seemed to warrant further investigation and a general check-up was made of back reports. This check-up involved examination of a great many accounts and records. Owing to the confusion in which many of these records were found, it was necessary to do a great deal of detailed work in checking and cross-checking different entries, tracing many errors, identifying accounts, straightening out dates, running down contradictions, etc. This extensive check-up was so complicated and there were so many obstacles to be faced and overcome that it took until March 1934 to complete it (R. 140–141).[8]

Although the investigation was not completed until March 1934, the complaint upon which this proceeding was based was dated April 9, 1934 (R. 25) and was served upon respondent April 11, 1934 (R. 10). A hearing on the charges contained in the complaint was set for May 14, 1934, at Chicago before a referee designated for the purpose of holding the hearing (R. 25).

Notwithstanding the obviously involved nature of the investigation required to discover violations of the character committed by respondent, the Circuit Court of Appeals held that Section 6 (b) of

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[8] For a more detailed description of the involved nature of this investigation, see discussion at pages 36–40, *supra*.

the Grain Futures Act did not authorize proceedings against persons on account of violations "committed and completed two years before the complaint was filed" (R. 483).*

Later it will be shown that there are many reasons why the construction of Section 6 (b) adopted by the Circuit Court of Appeals renders that Section wholly impracticable and ineffective and defeats the accomplishment of the legislative purpose in enacting it. But before showing this, it should be emphasized that the court itself recognized that its decision would virtually destroy the effectiveness of the statute as a means of regulation. Thus, the Circuit Court of Appeals said:

> Respondents argue that although the statute uses the present tense, it should be so construed as to include past transactions. A rather strong and persuasive argument is made in favor of the wisdom of such a construction, without which the power to deal with an offender is almost nil. We are, however, required to construe the statute, not to pass upon its purposes, but upon its wording. [R. 482.]

Later in the opinion the court refers to "the power to suspend for past transgressions" without which "the section is sterile" (R. 483).

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* The court's ruling was based solely upon a literal construction of the phrases "is violating" and "is attempting to manipulate" found in Section 6 (b). The court in effect held that because of the use of the present tense of the verb in Section 6 (b) that Section did not authorize the proceedings in this case (R. 482).

Thus petitioners come before this Court seeking a reversal of a judgment pursuant to an opinion in which the court rendering the judgment has expressly found that its own construction of the Act will render the power to deal with an offender "almost nil," and will render the Section "sterile."

On this point the conclusion of the Circuit Court of Appeals is entirely correct. Its construction of Section 6 (b) eviscerates the Section and leaves the Commission virtually powerless to prevent violations of the reporting requirements by traders, and otherwise operates to defeat the power of the Commission to prevent manipulation of the price of grain.

IMPORTANCE OF REPORTING REQUIREMENTS

It will presently be shown that the situation created by the decision of the court below is particularly serious with respect to reporting requirements, because it is virtually impossible to apprehend a trader in the act of violating the reporting requirements. First, however, the importance of those reporting requirements to the statutory scheme of regulation should be noted, although it would seem to be too obvious to require much emphasis.

Regulation of grain exchanges with a view to preventing the concentration of too large holdings in the hands of individual traders (and thus to pre-

venting price manipulation) can only be accomplished by assembling through reports full information about the trading activities of the larger traders. The same court to which this writ of certiorari is directed—the Circuit Court of Appeals for the Seventh Circuit—expressly held, with respect to the Grain Futures Act, in the case of *Bartlett Frazier Co.* v. *Hyde*, 65 F. (2d) 350, 352 (certiorari denied, 290 U. S. 654), that:

> Without the unqualified duty to report and the untrammeled right of inspection, the efficacy of the act would be unduly restricted * * *.[10]

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[10] That Congress regarded the gathering of full information of trading activities as vital to the scheme of regulation undertaken is indicated by the following extract from a statement made on the floor of the House by Congressman Hays, a member of the House Committee on Agriculture which reported the bill:

> Mr. Hays. * * * This bill provides that every contract market shall make a memorandum of every business transaction and retain it for three years, so that the same may be examined or reviewed at any time by the Department of Agriculture or the Department of Justice. * * * Somewhere in the twilight zone between business investment and gambling manipulation a line should be drawn to determine what class of these wheat deals fall within the realm of legitimate enterprise and what class should bear the odium of market betting. No Government agency heretofore has been empowered to turn the light on this hazy and uncertain region. The exchanges, preferring the darkness of secrecy rather than the light of publicity, have kept no records, and no Government agency has had authority to require the keeping of

The first necessity to the effective prevention of manipulation is full and complete knowledge in the hands of the regulatory authority about the activities of the manipulator. To meet this necessity the rules and regulations promulgated pursuant to the Act require that every member of a contract market must make daily reports of his transactions and holdings to the Grain Futures Administration, whenever he has under his control accounts the net position of which equals or exceeds such amount as the Grain Futures Administration may from time to time specify (R. 434–438).

ABSURDITY OF STRICT CONSTRUCTION AS APPLIED TO REPORTING

It is virtually impossible to apprehend a trader in the act of violating these requirements. This

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records. No means have been available whereby any branch of the Government could inquire or obtain information as to how prices had been manipulated in the bread supply of the Nation. It is intended that the Secretary of Agriculture shall have the power to know in detail just how American grain dealing is carried on. He will be able to know what it is that obstructs and burdens the flow of the grain from the producer to the consumer. He will be able to know whether the economic law of supply and demand is violated, and whether market jugglers are manipulating prices. He will be able to analyze the various elements constituting the spread in price between what the farmer gets for his wheat and what the consumer pays for his flour. With all of this knowledge available to the Secretary of Agriculture we are hopeful that he may be able to remove the present hindrances to grain traffic. [Vol. 62, Cong. Rec., Part. IX, p. 9446.]

follows from the very nature of reporting. Should a member on a certain day reach a reportable position and fail to report it at the end of that day, such failure would immediately become a past violation. It would come into existence and would fall into the class of past transactions at one and the same moment. Apprehension could not be contemporaneous with commission. Obviously, no amount of vigilance could detect the failure of one to report before it happened. Once it happened, it would be a past violation. And as for the rendition of a false report, once such a report is rendered the rendition immediately becomes a completed wrongful act.

The obligation to report under the rules and regulations now in force is an obligation to report daily if one has net open interests in excess of a stated figure—500,000 bushels in the case of wheat. The requirement is that reports shall be made as soon as possible after the close of the market on each business day, and not later than thirty minutes before the opening of the trading session on the next business day (R. 434). Until the moment arrives when a person becomes delinquent, there is no assurance that he will not report. He is not a present violator because he is not delinquent. He is quite within his rights in taking the full time allowed for making his report. When the moment of his delinquency occurs, however, he becomes a past violator and, according to the construction contended for by respondent, the Commission could

do nothing about it. Such an absurd consequence cannot have been intended.

The above discussion relates, of course, to what is essentially an offense of omission, and yet it is an offense of omission so serious that if permitted to occur with frequency it could effectively nullify the Act's regulatory purpose. Failure to render reports, in other words, is an omission to comply with one of the most important requirements of the rules and regulations; yet such failures, if respondent's construction were adopted, would probably occur in wholesale fashion and thereby wreck the regulatory scheme.

But it is not alone omissions to report which would be put outside the Commission's authority if respondent's construction were to prevail. The rendition of false and inaccurate reports would likewise be invited. When does the wrongful act of submitting a false and inaccurate report occur? Until a report has been submitted, it cannot be presumed that it will be false and inaccurate. After the report is submitted, the wrong is in the past. It would, therefore, be impossible ever to proceed against one rendering false and inaccurate reports if respondent's construction were to receive judicial approval.

The above analysis is on the theory that the obligation to report recurs daily as long as one is under a duty to report and that each omission to report or each false and inaccurate report submitted, con-

stitutes a separate wrong. If, however, the view were to be taken that the failure on successive days to render reports, or the rendition on successive days of false and inaccurate reports, constituted a continuing violation—that is, a course of conduct to be treated as a single violation—the same absurdity would result. This follows from the fact that a person engaging in such a course of conduct could at any time break the course of conduct by filing a single report (if his violation has been one of omission) or by filing a single accurate report (if the violation has been one of commission, viz., filing false and inaccurate reports). The breaking of the course of conduct would render such course a past offense and would most certainly put it outside the authority of the Commission if respondent's construction were to prevail.

Under the construction for which respondent contends and which the Circuit Court of Appeals adopted, there is obviously no way in which the Commission can proceed against one who violates the reporting requirements. It follows that if the construction given Section 6 (b) by the Circuit Court of Appeals is to prevail, it will so narrow the meaning of that Section as to preclude proceedings against those who violate the reporting requirements, and the Section, as the court below said, will be rendered "sterile."

In his brief in opposition to the petition for writ of certiorari filed in this Court, respondent contended that "the petitioners place a too literal interpretation upon the section and fail to perceive that it is a current practice—not an isolated offense—which is to be corrected by Section 6 (b)." Respondent further said in that brief (at page 13):

> In each case the inquiry is one of fact. The ultimate question is whether the evidence will justify a conclusion that the accused individual is violating the Act, or is attempting to manipulate the market price of grain. Obviously no certain test can be applied, and each case must turn upon its own set of facts. In the case at bar, the Circuit Court of Appeals very properly held that the words of the statute cannot be stretched to include violations completed more than two years before the complaint was filed.

Thus respondent seeks to escape the consequences of the interpretation which he succeeded in persuading the Circuit Court of Appeals to adopt by saying that "In each case the inquiry is one of fact." It, therefore, appears that respondent, although contending that the Act empowers the Commission only to proceed against any person who "is violating the Act" or "is attempting to manipulate the market price of grain," now admits that there may be some instances where the literal language of the Act may be stretched to include past transactions. Respondent appears to infer that if

a practice is "a current practice," the Commission may proceed under Section 6 (b) even though the current practice has been interrupted—otherwise, there is no substance to respondent's admission inasmuch as a current practice may normally be interrupted at any time by the party engaging in it.

If respondent be understood to be arguing that the Commission may proceed with respect to a practice that is technically complete and a past violation provided that the Commission proceeds promptly enough, then there are two answers to respondent's argument: (1) respondent's argument destroys the basis of his whole case, namely, that the Commission's jurisdiction is restricted to suspension on account of violations presently being committed and not those which are technically in the past, and (2) if promptness in proceeding is the test of jurisdiction, in the instant case the order is clearly authorized because the Commission proceeded as promptly as possible consonant with a full investigation of the complicated maze of transactions involved in this case. Clearly, at the time the investigation of respondent's transactions was instituted, those transactions did constitute "a current practice." The record on its face, apart from the express testimony on the matter (R. 141), patently shows the complexity of respondent's transactions and the extraordinary labor involved in unraveling the labyrinth of accounts which he had created to conceal his activities. That respondent's transactions

may have ceased to be current in the strict sense by the time the investigation was completed, and there is nothing in the record to indicate whether they had or had not ceased to be current, should not constitute the technical loophole through which respondent may slip. Otherwise, a premium is put on craftiness in concealment.

If respondent means that Section 6 (b) only authorizes proceedings with respect to a "current practice", in such instances where an investigation may be completed before the practice has ceased to be current, then the effect of respondent's argument is that as a practical matter the Commission is empowered to proceed against small violators whose transactions are simple and easy to unravel, but not against the large violators as to whose activities investigation consumes time—an obviously untenable position.

It is submitted that the application of any reasonable test to the facts of this case would reveal that the petitioners proceeded as promptly as they could in view of the magnitude of the investigation.

RESPONDENT'S CONSTRUCTION CONFLICTS WITH THE PROCEDURAL REQUIREMENTS OF SECTION 6 (b)

Another persuasive indication that the Circuit Court of Appeals' construction is erroneous is to be found in the procedural provisions of Section 6 (b). Congress, with full knowledge of the problem involved in regulating grain exchanges, never-

theless set up a procedure inconsistent with the idea that it is to be limited to summary action against those who are caught at the very moment when engaged in unlawful activities.

It is to be noticed that the Act provides for notice and hearing preceding the denial of contract market trading privileges. At least three days' notice of hearing is required and authority is granted to designate a referee to hold hearings, which may be held in the District of Columbia or elsewhere. All of the evidence at such hearings must be reduced to writing and transmitted to the Secretary of Agriculture as chairman of the Commission. The Commission consists of three members of the President's cabinet—officials holding office of the highest rank who are charged with many other duties and responsibilities under various acts of Congress. While the Act does not specifically require that opportunity be given for oral argument before the full Commission and the submission of briefs, it is fair and proper that such opportunity be given. Even if oral argument and the submission of briefs were not permitted, in the very nature of things (obviously within the knowledge of Congress) it requires some time for a Commission composed of cabinet officers to analyze the evidence and reach a just conclusion.

The above procedure is prescribed by the Act and it must be observed.

Under the construction adopted by the court below, since summary action would be required if anything at all were to be accomplished, the procedure prescribed would be ineffectual.

Respondent, in his argument in the court below, placed great reliance upon the fact that three days is the minimum notice of hearing permitted, contending that where such a short period of notice is allowed, summary action must have been contemplated. Conceding *arguendo* that three days is a short period of notice, the most that can be inferred from it is that Congress intended to allow expedition of proceedings to the extent that it is physically and practically possible when a crisis arises. No inference may reasonably be drawn from the period of notice, however, that Congress intended *merely* to authorize summary action, particularly when the subsequent steps in the procedure (which, as a practical matter, would almost always make summary action impossible) are contemplated.

Plainly the procedure prescribed by Congress is wholly inconsistent with respondent's contention that the Commission lacks power to enter orders with respect to violations or attempts to manipulate prices which have been completed. If the jurisdiction of the Commission to enter an order under Section 6 (b) were dependent upon final action sufficiently prompt to affect the guilty party before his violation is completed, it would be utterly impossible to observe the procedural requirements which the law has provided.

Respondent contended in the court below that the purpose of the Act is "prophylactic;" that the Act contemplates summary action to check evils in the course of commission; that Congress wanted to authorize the Commission to stop subversive practices and protect the public; and that the function conferred upon the Commission was in the nature of a policing function, comparable to the function of the policeman rather than that of the police judge. But even if there were some support in the legislative history of the Act, or in other circumstances, for the contention that Congress might have intended to authorize summary preventive action, yet that would not establish that Congress did not intend to authorize the Commission to do more. Petitioners, of course, do not contend that the Commission does not have power to proceed as promptly and summarily as it is practically possible to do in view of the procedural limitations imposed by the Constitution and the statute, and the other practical difficulties present in acting by way of prevention against the evils of the type at which this statute is aimed. But the purpose here is to show that respondent's contention that the Commission's authority is restricted to the so-called "prophylactic" function is erroneous.

In substance, respondent's argument that the Commission's authority is restricted to the so-called "prophylactic" function is an argument that the Commission's power is solely preventive; that it exists only to purge the market of present evils.

Intrinsic in this argument is the notion that the Commission's power is coincident with the existence or present threat of wrong-doing and that the Commission's power ceases with the termination of such wrong-doing or threat. In this view, while the danger is present the Commission may act; but when the danger is past, the Commission's power is spent. If the foregoing constitutes a correct statement of the limit of the Commission's power, then obviously it must limit the Commission's power not only with respect to the institution of proceedings against violators but also with respect to the length of time a suspension against a violator may run. Manifestly, if the power of the Commission is limited by the present existence or threat of a violation of the Act, then also the term of suspension which the Commission may impose is likewise so limited, because the "prophylactic" purpose would not be accomplished by prolonging the suspension beyond the present existence or threat of a violation. But if this be true, it results in an absurdity, because the continuance of a violation could not in any event last beyond the moment of the effectiveness of a suspension order. A person under suspension and therefore not operating on a contract market of course would not render any reports nor would he be required so to do. Nor would such a person be in a position to attempt to manipulate the market price of grain. Such a person therefore could not be a present violator of the law in the sense implied by respondent's argument,

because such person would not be in a position where he possibly could violate the law. Plainly, therefore, if the purpose and meaning of the statute is so limited as respondent suggests to a mere "prophylactic" purpose, that purpose would at once be accomplished by the suspension order becoming effective. As a result of respondent's position then, the order would necessarily become punitive the instant it became effective because the course of illegal conduct would then be broken and the present threat removed. But respondent says punitive orders are not authorized. It would seem, therefore, that the order would become illegal at the moment of its effectiveness, since such order would then and thereafter relate to an offense which the order itself had terminated and relegated to the past. Such an absurdity as would result from the strict application of respondent's argument respecting the "prophylactic" effect intended as the limit of the Commission's power, at once discloses the necessity of rejecting the argument. Such a refined and technical construction of Section 6 (b) as advanced by respondent devitalizes the statute and makes a mockery of legislation designed to be remedial.

THE AMOUNT OF TIME NECESSARY TO EXPOSE VIOLATIONS IS NOT ALWAYS WITHIN THE COMMISSION'S CONTROL

Notwithstanding the practical desirability of expeditious action against violators of law, much time is often necessarily required to make an adequate investigation in order fairly to ascertain the

facts. It is better that proceedings be instituted only after appropriate investigation than that innocent persons be accused on insufficient data and put to the needless expense of a futile hearing. Moreover, because of the time often consumed by judicial review, which is constitutionally required, further delay is often interposed before orders justified by the evidence can be made effective. Even though unfortunately the public may sometimes suffer by delayed enforcement of law, there is at least the compensatory advantage that individual rights are thus fully protected.

In a brief filed in this Court in opposition to the petition for writ of certiorari, respondent contended (in an attempt to answer petitioners' contention that time was often necessarily consumed by Commission proceedings) "that the Secretary and the Commission are at liberty to act as promptly as they desire" (p. 13) and that the Commission may "absolutely control the amount of time to be consumed by the procedure" (p. 14). Respondent then briefly summarized (although inadequately) the organization of the Grain Futures Administration, stressing the power of that Administration to examine the books and records of Commission houses, require daily reports, and otherwise to gather "secret and informative statistics that serve as a basis for the surveillance of the contract market, and disclose the volume of trading in the market and the character of the individual trading" (pp. 14–15). It is manifest, of course,

from the summary of the activities of the Grain Futures Administration that the effectiveness of the "surveillance" exercised by that Administration is dependent upon honesty in reporting and upon full compliance with the reporting requirements. It is submitted that it is absurd to contend in a case where the essence of the charge against respondent is concealment that the Secretary and the Commission are at liberty to act as promptly as they desire. Where successful concealment through violation of the reporting requirements has been practiced for a period of two years, it is indeed ironical that respondent should contend that the Commission could have proceeded more promptly because it had full access to the facts through the reporting procedure set up under the Grain Futures Administration.

As already noted, the facts in this case disclose the prompt inauguration of an investigation as soon as the Grain Futures Administration had reasonable cause to suspect the existence of respondent's course of illegal conduct. Not only does the testimony expressly show that such investigation lasted more than two years, although it was conducted with reasonable promptness, but even in the absence of such testimony it would be obvious from a cursory survey of the documentary evidence in this case that a long period of time would necessarily be consumed in detecting involved transactions deliberately designed and carried out to avoid detection. The examination of

thousands and thousands of book entries was necessary, as well as the piecing together of transactions carried on through different accounts, carried under different names or symbols, and with different firms, in order to acquire the complete and unchallenged facts with respect to respondent's unreported transactions carried on almost daily for a full two-year period. Yet respondent suggests that the Commission can absolutely control the amount of time to be consumed by the procedure, entirely overlooking the fact that successful concealment may mislead or thwart the Commission's action for months or even years, the length of the delay largely depending upon the efficacy of the concealment.

In view of all the above considerations, it is respectfully submitted that the construction given Section 6 (b) by the Circuit Court of Appeals renders that Section impractical and ineffective as a means of dealing with those very persons at whose activities the Section was aimed.

II

SECTION 6 (b) SHOULD BE CONSTRUED SO AS TO GIVE IT A REASONABLE AND PRACTICAL MEANING

This is not a case where the Court is asked to choose between two possible meanings of a statute merely on the ground that the balance of convenience rests with one rather than with the other. The choice here is between meaning and nullity. It has already been pointed out that if the construction of

the Circuit Court of Appeals is correct, Section 6 (b) is robbed of all vitality, its language loses all significance, and the Act as a whole stands as if Section 6 (b) had never been included.

The Grain Futures Act is designed to prevent manipulation of the price of grain. Manipulation is the work of individual traders. Section 6 (b) purports to set up machinery for the enforcement of the Act against individual traders, including the enforcement of the reporting requirements lawfully made by the Secretary of Agriculture. It has been shown that the reporting requirements are the mainspring of that machinery. To give literal import to the words "is violating" and "is attempting to manipulate" as the Circuit Court of Appeals did, is to prevent Section 6 (b) from accomplishing the purpose for which it was placed in the law. It is submitted that there is no dogma of literal construction which calls for this result.

This Court has not hesitated to construe the words of a statute in such manner as to avoid an absurd and impracticable result and to give the statute meaning. Thus it has limited the scope of statutes when a literal reading of their words would have led to an absurd or unreasonable consequence. In *Church of the Holy Trinity* v. *United States,* 143 U. S. 457, it was held that the words "perform labor or service of any kind" in a statute intended to prohibit the importation of foreigners under contract to perform labor or services of any kind did not include the labor or services of a rector or

minister of a church who, being an alien, had contracted with a religious society to remove to the United States and enter into the service of such society. The Court held that while the facts brought the case within the literal meaning of the Act, the Act nevertheless was not intended to apply to such a situation. The Court said (at pp. 458–459):

> It must be conceded that the act of the corporation is within the letter of this section, for the relation of rector to his church is one of service, and implies labor on the one side with compensation on the other. Not only are the general words labor and service both used, but also, as it were to guard against any narrow interpretation and emphasize a breadth of meaning, to them is added "of any kind;" and, further, as noticed by the Circuit Judge in his opinion, the fifth section, which makes specific exceptions, among them professional actors, artists, lecturers, singers, and domestic servants, strengthens the idea that every other kind of labor and service was intended to be reached by the first section. While there is great force to this reasoning, we cannot think Congress intended to denounce with penalties a transaction like that in the present case. It is a familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers.

In *United States* v. *Kirby,* 7 Wall. 482, defendants were indicted for violating an act of Congress providing that if any person shall knowingly and wilfully obstruct or retard the passage of mail or any driver or carrier, etc., carrying the same, he shall, upon conviction for every such offense, pay a fine. The specific charge was that defendant knowingly and wilfully retarded the passage of a mail carrier and also of a steamboat which at the time was engaged in carrying the mails. The defense was that the mail carrier had been indicted for murder by a state court and that defendant had a bench warrant for the mail carrier's arrest, and that in obedience to this warrant defendant entered upon the steamboat and arrested the mail carrier, although the effect of defendant's action was to obstruct or retard the passage of the mail. This Court held that defendant's action was not an offense within the meaning of the statute, saying (pp. 486–487):

> All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language, which would avoid results of this character. The reason of the law in such cases should prevail over its letter.
>
> The common sense of man approves the judgment mentioned by Puffendorf, that the Bolognian law which enacted, "that

> whoever drew blood in the streets should be punished with the utmost severity", did not extend to the surgeon who opened the vein of a person that fell down in the street in a fit. The same common sense accepts the ruling, cited by Plowden, that the statute of 1st Edward II, which enacts that a prisoner who breaks prison shall be guilty of felony, does not extend to a prisoner who breaks out when the prison is on fire—"for he is not to be hanged because he would not stay to be burnt." And we think that a like common sense will sanction the ruling we make, that the act of Congress which punishes the obstruction or retarding of the passage of the mail, or of its carrier, does not apply to a case of temporary detention of the mail caused by the arrest of the carrier upon an indictment for murder.

Not only has this Court limited the scope of statutes when a literal reading of their words would have led to an absurd or unreasonable consequence, but it has also sometimes extended the meaning of statutory language. Thus, in *United States* v. *Lacher,* 134 U. S. 624, the defendant, an employee of the post office, was found guilty of embezzling a letter containing an article of value. The indictment was based on a section of the revised statutes which created two offenses with respect to taking articles from letters. One offense created was embezzlement and the other was stealing. The grammatical construction of the section was such that if strictly construed it would have

provided no penalty for embezzlement but only a penalty for stealing. Nevertheless, this Court held that the indictment for embezzling a letter was good, saying (at p. 626):

> As secreting, embezzling or destroying letters, etc., containing articles of value, are plainly grave offences, and are described in the section with particularity, the intention to impose a penalty on their commission cannot reasonably be denied, and although the apparent grammatical construction might be otherwise, the true meaning, if clearly ascertained, ought to prevail.

This Court further said (at p. 628):

> As contended on behalf of the defendant, there can be no constructive offences, and before a man can be punished his case must be plainly and unmistakably within the statute. But though penal laws are to be construed strictly, yet the intention of the legislature must govern in the construction of penal as well as other statutes, and they are not to be construed so strictly as to defeat the obvious intention of the legislature. *United States* v. *Wiltberger,* 5 Wheat. 76; *United States* v. *Morris,* 14 Pet. 464; *Am. Fur. Co.* v. *United States,* 2 Pet. 358, 367.

Thus, in the *Lacher* case the statute was construed so as to cover an apparent omission, even though by so doing a penalty would be applied to acts otherwise not punishable under the statute. This obviously sensible principle of giving statutes a construction which will render them effective was

applied even though the statute in question was a criminal statute. The provisions of the Grain Futures Act involved herein are not criminal provisions. *A fortiori* the principles of construction enunciated in the *Lacher* case apply here with even greater force.

In *Silver* v. *Ladd,* 7 Wall 219, in construing the Donation Act, which related to the making of donations to settlers on public lands in Oregon, the Court held that the words "single man" as used in the statute included an unmarried woman. This Court referred to the purpose of the Donation Act and the circumstances surrounding the settlement of western lands, and said (pp. 225–226):

> Anything, therefore, which savors of narrowness or illiberality in defining the class, among those residing in the Territory in those early days, and partaking of the hardships which the act was intended to reward, who shall be entitled to its benefits, is at variance with the manifest purpose of Congress.

The Court was well aware that it was extending the actual language of the statute. After quoting portions of the language of the statute, the Court said (p. 226):

> We admit the philological criticism that the words "single man" and "married man", referring to the conjugal relation of the sexes, do not ordinarily include females. And no doubt it is on this critical use of the words that the decision of the Oregon court is mainly founded.

Thereafter, however, the Court discussed in detail considerations with respect to the congressional intent which led the Court to the conclusion that Congress intended to extend the benefits of the Act to unmarried women.

In *United States* v. *Katz,* 271 U. S. 354, this Court said (at p. 357):

> All laws are to be given a sensible construction; and a literal application of a statute which would lead to absurd consequences should be avoided whenever a reasonable application can be given to it, consistent with the legislative purpose.

In *Sorrells* v. *United States,* 287 U. S. 435, this Court said (at p. 446):

> Literal interpretation of statutes at the expense of the reason of the law and producing absurd consequences or flagrant injustice has frequently been condemned.

This Court further said (at p. 448):

> We think that this established principle of construction is applicable here. We are unable to conclude that it was the intention of the Congress in enacting this statute that its processes of detection and enforcement should be abused by the instigation by government officials of an act on the part of persons otherwise innocent in order to lure them to its commission and to punish them. We are not forced by the letter to do violence to the spirit and purpose of the statute.

In *Ash Sheep Co.* v. *United States,* 252 U. S. 159, this Court, in the light of the history and purpose of a statute ratifying an agreement with an Indian tribe, construed the word "cattle" as used in the statute to include "sheep." The suit involved an action to recover a penalty on account of the defendant having pastured 5,000 sheep on land on which the pasturing of cattle was forbidden without having obtained the consent of the Indian tribe as required by the statute. The effect of the construction of the statute, therefore, was to extend the penalty provision therein to cover an offense not strictly within the literal language of the statute. This Court stated, however, that the admitted rule that penal statutes are to be strictly construed is not violated by allowing their words to have full meaning or even the more extended of two meanings where such construction best harmonizes with the context and most fully promotes the policy and object of the legislature. See also *United States* v. *Corbett,* 215 U. S. 233; *Johnson* v. *Southern Pacific Co.,* 196 U. S. 1; *United States* v. *Bowman,* 260 U. S. 94; *Hawaii* v. *Mankichi,* 190 U. S. 197.

The above general principles are so well grounded in our canons of statutory construction and interpretation that further amplification of discussion of judicial decisions is unnecessary, although many more cases could be cited and discussed applying these principles to varied types of statutory provisions.

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Where the question is whether or not a statute applies to facts occurring in the present, past, or future, the same principles of statutory construction apply. It is primarily a question of ascertaining intent.

The Sterling, 65 F. (2d) 439, recently decided in the Circuit Court of Appeals for the Fifth Circuit, is directly in point. This case came to the Circuit Court of Appeals on appeal from decrees adjudging two coastwise vessels to be forfeited for having been engaged in a trade other than that for which they were licensed. It was contended by the appellants that the libels failed to allege, and the facts failed to establish, cause for forfeiture, because it appeared that the vessels were not at the time of their respective seizures engaged in violating their licenses, but the violations had occurred at some prior time. The statute there involved (R. S. Sec. 4377) provided in part that "Whenever any licensed vessel * * * *is* employed in any other trade than that for which she is licensed * * * such vessel * * * shall be forfeited." The Circuit Court of Appeals affirmed the decree, saying (p. 440):

> The construction appellants contend for leads to absurd results. They say that, because the statute uses the word "is" rather that the words "has been" with reference to the forbidden "transfer" and the forbidden business, it speaks only in the present tense, relates alone to the facts existing at

> the time of seizure, and operates to forfeit only when seizure and violation are contemporaneous. Under such construction such a vessel could be transferred with impunity as the owner willed, for it would be impossible for officers to exercise such close surveillance as that the act of transfer could not be accomplished except in their sight. Under such construction, a vessel could go in and out of her licensed trade whenever not directly under the eye of some seizing officer. The statute intended no such far-fetched result. It does not so provide. In using the words "is transferred" and "is employed", it used them in a preterit sense, to define a status brought about by the forbidden act with consequent forfeiture.

This Court has also given statutes a broader application than the strict construction of the tense of a verb would warrant in order to accomplish the true intent of the statute. In *Huidekoper's Lessee* v. *Douglass,* 3 Cranch 1, there was involved a statute of Pennsylvania providing for the sale of vacant land in that state. The statute provided for actual settlement of the land as indispensable to the completion of the title. In describing this actual settlement the statute declared that it should be made in the case of a warrant previously granted, within two years next after the date of such warrant, "by clearing, fencing, and cultivating at least two acres for every hundred acres contained in one survey, erecting thereon a messuage for the habitation of man, and residing, or caus-

ing a family to reside thereon for the space of five years next following his first settling of the same, if he or she shall so long live." Such provisions created two incompatible qualifications since literally construed they required a person to reside upon land for five years within a two-year period. This difficulty was, in effect, obviated by the Supreme Court by reading the statute as though the participle "residing" were the future tense of the verb "to reside." The manner in which this change accomplished a sensible construction of the statute is set forth in the following excerpt from the opinion of the Court delivered by Chief Justice Marshall (p. 66):

> The manifest impossibility of completing a residence of five years, within the space of two years, would lead to an opinion, that the part of the description relative to residence, applied to those only who had performed the condition, before the payment of the purchase-money; and not to those who were to perform it afterwards. But there are subsequent parts of the act which will not admit of this construction, and consequently, residence is a condition required from the person who settles under a warrant, as well as from one who entitles himself to a warrant by his settlement.
>
> The law requiring two repugnant and incompatible things, is incapable of receiving a literal construction, and must sustain some change of language to be rendered intelligible. This change, however, ought to

> be as small as possible, and with a view to the sense of the legislature, as manifested by themselves. The reading, suggested by the counsel for the plaintiff, appears to be most reasonable, and to comport best with the general language of the section, and with the nature of the subject. It is by changing the participle into the future tense of the verb, and instead of "and residing, or causing a family to reside thereon", reading "and shall reside", &c. The effect of this correction of language will be to destroy the repugnancy which exists in the act as it stands, and to reconcile this part of the sentence to that which immediately follows, and which absolutely demonstrates that in the view of the legislature, the settlement and the residence consequent thereon, were distinct parts of the condition; the settlement to be made within the space of two years from the date of the warrant, and the residence in five years from the commencement of the settlement.

In *Rutherford* v. *Greene's Heirs*, 2 Wheat. 196, this Court, in an opinion by Chief Justice Marshall, in effect construed the words "shall be," in a statute making a special grant of land, to mean "is."

In *Heydenfeldt* v. *Daney Gold, etc., Co.*, 93 U. S. 634, this Court construed a section of the Enabling Act of March 21, 1864, which provided that certain sections of land within the State of Nevada "shall be, and are hereby, granted to said State for

the support of common schools." At the time of the passage of the Act the land to be affected by it had not been surveyed. This suit involved a patent, the validity of which depended upon the grant contained in the Enabling Act. After fully considering the purpose of Congress, the Court decided that the words of present grant in the Act were intended to operate with respect to land subsequently surveyed. The Court said (p. 639):

> Literally construed, they [the words of present grant] refer to past transactions; but evidently they were not employed in this sense, for no lands in Nevada had been sold or disposed of by any act of Congress. . . . Congress cannot be supposed to have intended a vain thing, and yet it is quite certain that the language of the qualification was intended to protect the State against a loss that might happen through the action of Congress in selling or disposing of the public domain. It could not, as we have seen, apply to past sales or dispositions, and, to have any effect at all, must be held to apply to the future.

In *The Emily,* 9 Wheat. 381, there was involved an Act of Congress which provided that no citizen of the United States, or any other person residing within the United States, should build, fit, equip, load or otherwise prepare any ship within any port of the United States for the purpose of carrying on trade in slaves. It further provided that if any vessel "*shall be so fitted* out" for such purpose

it shall be forfeited. (Italics supplied.) In a libel of information containing a count for violation of the latter provision the defense was made that the proof did not sustain this count, it being argued that in order to incur the forfeiture provided by the statute the vessel must be *completely fitted and ready for sea,* and that this vessel was merely *in the process of being fitted* and made ready for sea. Notwithstanding that the language of the statute seemed to refer only to a situation where the fitting for sea was completed, this Court held it applied to a vessel presently in the course of being so fitted. The Court said (at p. 389):

> To apply the construction contended for on the part of the claimant, that the fitting or preparation must be complete, and the vessel ready for sea, before she can be seized, would be rendering the law in a great measure nugatory, and enable offenders to elude its provisions in the most easy manner.

State courts also have given statutes broader meaning than a strict construction of the verbal tense employed would indicate in order to prevent such statutes from being meaningless. In *Hayden* v. *Ortkeiss,* 83 Ky. 396, there was involved a state statute which provided that "if the judge who presided at the trial do not preside when a motion for a new trial *is* overruled, the bill of exceptions may be certified by by-standers * * *"

(italics supplied). In construing the above provision, the court said (p. 399):

> If this section, when properly construed, does not provide for a case like the one now under consideration, and is to be limited, as the literal words seem to provide, to a case where the judge who presided at the trial does not act upon the motion for a new trial, then in case time is given until a subsequent term to present a bill of exceptions, and the judge who presided at the trial and overruled the motion for a new one is not present at the next term, the party is remediless. In our opinion the word *"is"*, in the section *supra,* was intended as equivalent to the words "has been", and that if further time be given to tender the bill, and the absence of the judge who presided at the trial prevents it being signed by him within the allotted time, then it should be certified by by-standers, whether the motion for a new trial was overruled by the judge who presided at the trial, or has been by reason, for instance, of his death, overruled by a special judge subsequently presiding in the case.

The *Hayden* case was subsequently followed in *Louisville So. R. R. Co.'s Receivers* v. *Lewis,* 101 Ky. 296, 41 S. W. 3.

In *Maysville & Lexington R. R. Co.* v. *Herrick,* 76 Ky. 122, the Court of Appeals of Kentucky construed a statute of that State providing that "a married woman who shall come to this common-

wealth without her husband, he residing elsewhere, may acquire property, contract, and bring and defend actions as an unmarried woman." The appellee therein was a married woman who had come to Kentucky prior to the adoption of the above statute. The question was whether she came within its terms in view of the use of the words "who shall come." The Court held that the statute applied to the appellee, saying (at p. 125):

> Mrs. Herrick is within the description of persons intended to be benefited by this statute, unless she is excluded because she came to Kentucky prior to the adoption of the General Statutes. To exclude her because the statute speaks only of married women "who shall come", etc., would be to adhere to the letter of the law and to disregard its spirit. It was intended as an enabling act, for the benefit of a class of persons laboring under legal disabilities, and not enjoying the protection incident to the state of marriage, because of the absence from the commonwealth of their husbands; and a person clearly within this class will not be denied the benefit of a remedial statute by grammatical construction, at the expense of the manifest legislative intent.

In *Malloy* v. *Chicago & Northwestern R. R. Co.*, 109 Wis. 29, 85 N. W. 130, the Supreme Court of Wisconsin construed a state statute which provided that an action for recovery of damages for personal injuries should be brought within six

years, and that no such action could be maintained unless within one year after the injury notice in writing "shall be served", stating the time and place of the injury, etc. The Court held that the verb "shall be served" should be construed to mean "shall have been served."

Another circumstance in the structure of the Grain Futures Act which indicates that the procedure provided by Section 6 (b) was not intended to be restricted to proceedings against present violators is the failure of the statute to provide for cease and desist orders. A cease and desist order is the administrative law counterpart of the injunction. If all that Congress intended was to give the Commission summary powers to act against violators caught in the commission of an offense, it would seem that the Commission would have been empowered to enter cease and desist orders which would have had the practical effect of stopping present violations and operating to prevent their continuance in the future. The so-called "prophylactic" purpose which respondent contends was the sole purpose of Congress could have been accomplished much more appropriately through authorizing the Commission to enter cease and desist orders. It has been held that cease and desist orders cannot be enforced with respect to violations that have ceased, *L. B. Silver Co.* v. *Federal Trade Commission,* 292 Fed. 752, but that case obviously would not apply to the type of order

authorized in Section 6 (b) and indeed that case merely tends to emphasize the difference between a cease and desist order and the type of order authorized under Section 6 (b).

Another aspect of Section 6 (b) which further emphasizes the fallacy of respondent's contentions as to the meaning of the Section is brought out by the language of the Section conferring authority on the Commission to "require *all* contract markets to refuse such person all trading privileges thereon for such period as may be specified in said order." (Italics supplied.) Now it is patent that in any case which arises before the Commission, the activity of a trader will have been confined to one market or perhaps to several markets, but almost certainly it will not have extended to all of them. In the case of respondent, all of his activities involved herein occurred on the Chicago Board of Trade. If the purpose had been merely to check an existing course of violation, it would seem clear that the authority granted to the Commission would have been to order the denial of trading privileges upon the market or markets upon which the violation was actually continuing. If the purpose of Section 6 (b) is restricted to prophylactic measures, and a certain trader is found to be violating the law at the moment on the Chicago Board of Trade, what prophylactic purpose would be served by ordering the grain exchanges at Kansas City, Minneapolis, Wichita, San Francisco, etc., to deny

him trading privileges for a specified period? Yet the language of the statute makes it mandatory upon the Commission, if it enters an order at all, to make it applicable to all contract markets.

III

THE LANGUAGE OF SECTION 6 (A) IS NOT INCONSISTENT WITH PETITIONERS' INTERPRETATION OF SECTION 6 (b)

The Circuit Court of Appeals apparently took the view that it was compelled to construe Section 6 (b) as applying only to continuing offenses because Section 6 (a), which provides for proceedings against contract markets, uses the words "has failed or is failing," whereas Section 6 (b) uses the words "is violating" and "is attempting to manipulate" (R. 482). It is submitted that the language of Section 6 (a) is not conclusive of the meaning of Section 6 (b).

When different words are used in different parts of a statute and their use is deliberate and premeditated, the difference in language may properly be regarded as mirroring a difference in intent. But according to well settled principles of construction it is improper to apply this rule, or any other rule of construction, mechanically, and irrespective of the circumstances under which the words were chosen, and in disregard of the results which will follow, since when so applied it ceases to

be a useful canon of construction and becomes a mischievous fiction.[11] If the words in Section 6 (a) and 6 (b) are viewed realistically and in the light of their legislative history, it is clear that in this case the difference in language has no significance.

The assumption underlying the contention that difference in language always reflects difference in intent is that the same draftsman has chosen different words for the purpose of achieving a different result. In the case of Sections 6 (a) and 6 (b), this assumption has no foundation in fact. These Sections had their genesis in the so-called "Future Trading Act" which was passed by the 67th Congress on August 24, 1921. That Act, as introduced

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[11] It is elementary that no one canon of construction standing alone is conclusive as to the meaning of a statute. In *Helvering* v. *Stockholms &c. Bank*, 293 U. S. 84, 89, this Court said in discussing the *ejusdem generis* rule:

> But while the rule is a well-established and useful one, it is, like other canons of statutory construction, only an aid to the ascertainment of the true meaning of the statute. It is neither final nor exclusive. To ascertain the meaning of the words of a statute, they may be submitted to the test of all appropriate canons of statutory construction, of which the rule of *ejusdem generis* is only one. If, upon a consideration of the context and the objects sought to be attained and of the act as a whole, it adequately appears that the general words were not used in the restricted sense suggested by the rule, we must give effect to the conclusion afforded by the wider view in order that the will of the legislature shall not fail.

in the House (H. R. 5676) contained a Section 6 (a) similar to Section 6 (a) of the Grain Futures Act. It did not at that time include Section 6 (b) or any analogous provision.[12] Section 6 (b) was added by the Senate Committee on Agriculture and Forestry in substantially the same form in which it appears in the Grain Futures Act, including the words "is violating." Section 6 (b) was not discussed in the conference report made by the House Committee (House Reports 345, 362, 67th Congress, First Session). The Future Trading Act was held unconstitutional by this Court in *Hill* v. *Wallace*, 259 U. S. 44. Thereafter, in the second session of the 67th Congress, the Grain Futures Act was passed. It contained Sections 6 (a) and 6 (b) in substantially the same form as Sections

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[12] In the court below, respondent cited certain statements made in Congressional hearings and debates preceding the enactment of the Future Trading Act in support of his construction of the statute. Most of these statements were made either in debates or in hearings which occurred before Section 6 (b) had been added to the bill by the Senate Committee. Consequently, they cannot be regarded as throwing any light on the meaning of that Section. For example, some of these statements were made in hearings before the House Committee on Agriculture in connection with a proposal to authorize the Secretary of Agriculture to issue cease and desist orders (Hearings before House Committee on Agriculture on Future Trading, 67th Congress, First Session, p. 183). Comments with respect to such a proposal are obviously of no assistance in determining the meaning of a section added later which did not provide for cease and desist orders.

6 (a) and 6 (b) of the so-called "Future Trading Act." [13]

Thus, in fact, Sections 6 (a) and 6 (b) originated in different committees and were drafted by different persons. It seems clear that the difference in wording was inadvertent and not deliberate and premeditated. This is the conclusion which must be drawn from the apparent belief of the Senate Committee that it was adding a section which accomplished the same result with respect to individual traders that Section 6 (a) accomplished with respect to contract markets. Senator Capper, one of the sponsors of the bill and a member of the Senate Committee on Agriculture and Forestry, which added Section 6 (b) to the Act, made statements in the debate in the Senate, after Section 6 (b) had been added, which clearly show that he thought it conferred authority to proceed with respect to past violations of the Act as well as present or continuing ones. He declared:

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[13] The legislative history of the Grain Futures Act throws no important light on the meaning of Section 6 (b). In the court below respondent placed some reliance on a statement made by Representative Tincher of Kansas, in the hearings on the Grain Futures Act conducted by the Committee on Agriculture of the House of Representatives, to the effect that "the object of this bill was not to punish some man that manipulated the market, but to prevent manipulation." It is clear, however, from the context of this remark that what Mr. Tincher had in mind was a criminal penalty and not the scope of the power of suspension. *Grain Futures Act, Hearings before the Committee on Agriculture, House of Representatives, 67th Cong., 2nd Sess., p. 35.*

> The bill then vests with the Secretary of Agriculture power, subject to court review, to investigate an individual member who is charged with disseminating false crop reports or manipulating prices, and, upon finding that such individual *has been guilty* of such practices, to suspend him from the trading privileges of contract markets. [Italics supplied.] [61 Congressional Record, Part 5, p. 4762.]

And again he stated:

> When it comes to the matter of enforcing the law, that power must be in some one. It would be absurd to enact a law without providing for its enforcement. Aside from the usual penalty clause two methods are used. One of them was placed in the bill at the suggestion of the exchanges, and that was to provide that in case one member of a board of trade *manipulated prices* or *circulated false reports* the Secretary of Agriculture, after a hearing, shall suspend him from the privileges of future trading. [Italics supplied.] [61 Congressional Record, Part 5, p. 4764.] [14]

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[14] Light is thrown on the intention of the Senate Committee in adding Section 6 (b) by the nature of some of the testimony given by witnesses in the hearings before that Committee. A number of witnesses testified that they thought the Act should contain a section permitting action against individual traders as well as against contract markets under Section 6 (a). Presumably the scope of authority over traders was to be as wide as that over contract markets. See *Hearings before the Committee on Agriculture and Forestry*

In the face of this legislative history it is unreasonable to regard the language of Section 6 (a) as decisive of the question here presented. The presence of the words "has failed" in Section 6 (a) does not preclude the Court from giving to Section 6 (b) an interpretation which is not absurd and impracticable.

In construing statutes this Court has given the same meaning to different words used in different sections of a statute when it was necessary to do so in order to achieve a reasonable result. For example, in *Fleischmann Company v. United States*, 270 U. S. 349, this Court was called upon to construe certain provisions of the Materialmen's Act of 1894, c. 280, 28 Stat. 278, as amended by c. 778, 33 Stat. 811. This Act provided that the bond required of anyone entering into a contract with the United States for the construction of public work should contain an obligation for the payment by the contractor of all persons supplying labor and materials in the prosecution of the work. The Act further provided that, if no suit was brought by the United States within six months after the completion and final settlement of the contract, any such person should have a right of action upon the bond and might *within one year after the per-*

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of th United States Senate on H. R. 5676, pp. 85, 151–153, 216, 277, 301, 335–337, 408–410. It is believed that the statements of these witnesses have some probative value with respects to the legislative purpose which moved the Senate Committee to add Section 6 (b) to the Act.

formance and final settlement of the contract, but not later, commence suit against the contractor and his sureties, and that where a suit was so instituted by a creditor or creditors only one action should be brought, and any creditor might file his claim in such action and be made a party thereto *within one year from the completion of the work.* If this latter provision had been taken literally, the time allowed intervening creditors to file claims would have expired earlier than the time allowed for bringing the original suit. This Court, however, refused to give the words of the Act their literal construction and held that the words *within one year from the completion of the work* should be construed as meaning the same thing as the words *within one year after the performance and final settlement* of the contract, saying (p. 360):

> The strict letter of an act must, however, yield to its evident spirit and purpose, when this is necessary to give effect to the intent of Congress.

In *Pickett* v. *United States,* 216 U. S. 456, the question arose as to the meaning of the Act of June 16, 1906, under which Oklahoma was admitted as a state. Section 13 of that Act provided that the state "*when admitted* shall be divided into two judicial districts." Section 14 of the Act provided "that all prosecutions for crimes or offenses hereafter committed in either of said judicial districts

as hereby constituted shall be cognizable within the district, in which committed, and all prosecutions for crimes or offenses committed before the *passage of this act* in which indictments have not yet been found or proceedings instituted shall be cognizable within the judicial district as hereby constituted in which such crimes or offenses were committed." This Court considered the question of whether Section 14 applied to crimes committed oefore and after the passage of the Enabling Act or crimes committed before and after the admission of the state. This Court expressed the opinion that despite the words "before the passage of this act" Section 14 applied to crimes committed before and after the admission of the State. In reaching this conclusion the Court relied chiefly upon the fact that the other construction would leave an interval of time, that is, the time between the passage of the Act and the admission of the state, when crimes might go unpunished because the old territorial courts would be deprived of jurisdiction, and the new courts and judicial districts would not yet exist. The Court said (p. 460):

> No construction should be adopted, if another equally admissible can be given, which would result in what might be called a judicial chasm. Under the first interpretation, crimes committed after the passage of this enabling act could not be prosecuted until

> the admission of the State and the coming into existence of the courts and judicial districts, to which jurisdiction of such crimes was to be transferred. If such crimes could only be prosecuted in courts organized upon the admission of the State there would be an indefinite period during which such crimes might go unpunished. In fact, there elapsed seventeen months between the date of this enabling act and the admission of the State and a consequent organization of the districts and courts to which jurisdiction over such crimes was to be transferred. A construction which might result in such deplorable consequences should not be adopted if any more sensible meaning can be reasonably given. The reason of the law, as indicated by its general terms, should prevail over its letter, when the plain purpose of the act will be defeated by strict adherence to its verbiage. * * * The obvious intention was that this, like the preceding section, should become effective upon the State being admitted, and it should be read as applying to crimes and offenses before and after such admission.

Compare *United States* v. *Union Supply Company,* 215 U. S. 50,[15] and *Kennedy* v. *Gibson,* 75 U. S. 498.

It is well recognized that when different words are used in different sections of a statute and the

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[15] See also *Murray* v. *Keyes*, 35 Pa. St. 384, 390–391; *Manion's Adm'r.* v. *Lambert's Adm'x.*, 10 Bush (Ky.) 295 (1874).

sections are the work of different draftsmen, it cannot be assumed that a different meaning is intended. Thus, in Sutherland *On Statutory Construction* (Chicago, 1891) it is stated (pp. 335-336):

> Every change of phraseology, however, does not indicate a change of substance and intent. * * * The change is often found to be the result of carelessness or slovenliness of the draftsman. *The changes of phraseology may result from the act being the production of many minds, and from being compiled from different sources.* Hence the presumption of a change of intention from a change of language is of no great weight, and must mainly depend on the intrinsic difference as resulting from the modification. [Italics supplied.]

The same rule is stated in Maxwell *On the Interpretation of Statutes* (6th Edition, London, 1920), one of the leading English text-books on the subject, in these words (p. 564):

> But just as the presumption that the same meaning is intended for the same expression in every part of an Act is, as we have seen, not of much weight, so the presumption of a change of intention from a change of language (of no great weight in the construction of any documents) seems entitled to less weight in the construction of a statute than in any other case; for the variation is sometimes to be accounted for by a mere desire to avoid the repeated use of the same words, and often from the circum-

> stance that the Act has been compiled from different sources; *and further, from the alterations and additions from various hands which Acts undergo in their progress through Parliament.* Though the statute is the language of the three estates of the realm, it seems legitimate, in construing it, to take into consideration that it may have been the production of many minds; and that this may better account for the variety of style and phraseology which is found, than a desire to convey a different intention. [Italics supplied.]

It is well established in the law of England that the use of different words in different sections of the statute does not necessarily establish a difference in meaning. For example, in *Lawless* v. *Sullivan,* 44 Law Times Reports, N. S. 897 (1881), the Judicial Committee of the Privy Council held that the word *income* in a statute meant *net profits* despite the fact that in allied statutes relating to the same subject matter the words *net profits* were used instead of *income.*[16] In reaching this result the Privy Council said (p. 900):

> The employment of different language in the same Act may in some cases help to show

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[16] See also *Hadley* v. *Perks*, L. R. 1 Q. B. 444; *Rolle* v. *Whyte*, 37 L. J. Q. B. 105; *Hudston* v. *Midland Railway Co.* (1869) 38 L. J. Q. B. 213; *Morris* v. *Mellin*, 6 B. and C. 446; *The Queen* v. *Hulme*, L. R. 5 Q. B. 377; *Myers* v. *Veitch*, L. R. 4 Q. B. 649; *Brace* v. *The Abercarn Colliery Co.*, L. J. 60 Q. B. N. S. 706; and *In Re Brall* (1893) 2 Q. B. 381.

> that the Legislature had in view different objects, but a change in language cannot be relied on as furnishing a general rule of construction, and the weight to be given to such changes must depend on a view of the entire enactments in which they occur, and the degree of ambiguity existing in the language to be construed.

It is significant that this Court has refused to adhere to a rigid rule that the same words used in different parts of the statute must have the same meaning and has said that if the same words are found in such circumstances as to indicate that they were employed in a different sense, they will be given different meanings. See, for example, *American Security Co.* v. *District of Columbia,* 224 U. S. 491; *Atlantic Cleaners & Dyers* v. *United States,* 286 U. S. 427; and *Helvering* v. *Stockholms &c. Bank,* 293 U. S. 84. It is submitted that the same canon of reasonableness should be observed in drawing conclusions from the use of different words in different sections of the same statute.

Finally, it is unreasonable to assume that Congress intended to achieve one result in Section 6 (a), with respect to contract markets, and another result in Section 6 (b), with respect to individual traders. Both Sections were designed to prevent the same evil—the manipulation of the price of grain. It has been pointed out on pp. 91–92, *supra,* that the Senate Committee which added Section 6 (b) to the Act thought that the

Section conferred authority over individual traders coextensive with the authority conferred by Section 6 (a) over contract markets. It is impossible to believe that Congress intentionally provided for suspension of an individual trader only if he was apprehended in the act of manipulation and at the same time authorized the suspension of a contract market for past or completed offenses. If there was to be discrimination, it might with more reason be expected in favor of an exchange. Suspension of a contract market is a drastic step which may involve injury to persons not actively engaged in violating the provisions of the Act. Moreover, the apprehension of violations of the Act by a contract market is not so difficult nor does it require as much time as apprehension of price manipulation by an individual trader. Both of these reasons conceivably might have led Congress to provide for a suspension of a contract market only when it was apprehended in the act of violating the provisions of the statute or of failing to enforce regulations. Section 6 (a) of the Act, however, clearly permits the Commission to suspend or revoke the designation of an exchange for a past violation. Nothing less could have been intended with respect to individual traders.

The difference in the language of Sections 6 (a) and 6 (b)—a difference which was inadvertent and not deliberate or premeditated—is too tenuous and artificial a basis for the attempted nullification of

a manifest Congressional intent. The two Sections should be given a similar meaning. Cf. *Helvering* v. *New York Trust Co.*, 292 U. S. 455, 467; *United States* v. *Union Supply Co.*, 215 U. S. 50, 54–55; and *Lawless* v. *Sullivan*, 44 Law Times Reports, N. S. 897 (1881).

IV

SECTION 6 (b) AS CONSTRUED BY PETITIONERS IS CONSTITUTIONAL

A. SECTION 6 (b) IS A PROPER EXERCISE OF REGULATORY POWER

Respondent contends that Section 6 (b) as construed by petitioners is unconstitutional. It should be noted that the Circuit Court of Appeals did not adopt this view, and by implication rejected it.[17] Inasmuch as respondent, in his brief filed in this Court in opposition to the petition for writ of certiorari, again advanced the view that petitioners' construction of Section 6 (b) would render it unconstitutional, that view will be dealt with at this point in this brief.

There are several aspects to respondent's argument, but in the main it rests upon the assumption that if Section 6 (b) is given the construction which petitioners contend for, a proceeding under that Section becomes a criminal proceeding and

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[17] The implication is found in the fact that the court in the final sentence of its opinion suggested that Congress could amend the Act to make it apply to completed transactions (R. 483).

suspension becomes a criminal penalty. Plainly, such is not the fact.

Under the construction of Section 6 (b) which petitioners contend for, the proceeding before the Commission involves substantially the question of whether in a business which it is admitted may be constitutionally subjected to regulations, one who has violated the regulations lawfully imposed may have his permit or license to carry on the business suspended for a time. Speculation upon grain exchanges belongs to that class of businesses the carrying on of which may be regulated in the public interest, and to that extent it cannot be classed as a natural right. The business in question does not consist in the sale by the owner of goods actually belonging to him but in speculation through the purchase or sale of so-called futures—a type of business having a close affinity to those for which it has always been recognized that a license or permit may properly be required.[18] The Grain Futures Act declares that transactions in grain involving the sale thereof for future delivery are affected with a national public interest,[19] and that it shall be unlawful for any person to deal

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[18] See the discussion in Cooley *Constitutional Limitations* (8th Ed., Boston, 1927), pp. 1329–1343.

[19] Section 3 of the Grain Futures Act (7 U. S. C. A., Sec. 5) provides as follows:

> Transactions in grain involving the sale thereof for future delivery as commonly conducted on boards of trade and known as "futures" are affected with a national public interest; that such transactions are car-

in grain futures (unless he is the actual owner or grower of grain, or the owner or renter of land on which grain is grown, or an association of such owners or growers of grain or owners or renters of land) unless the contract for purchase or sale is made by or through a member of a board of trade which has been designated by the Secretary of Agriculture as a contract market. The conditions under which a contract market must operate are

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ried on in large volume by the public generally and by persons engaged in the business of buying and selling grain and the products and by-products thereof in interstate commerce; that the prices involved in such transactions are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining the prices to the producer and the consumer of grain and the products and by-products thereof and to facilitate the movements thereof in interstate commerce; that such transactions are utilized by shippers, dealers, millers, and others engaged in handling grain and the products and by-products thereof in interstate commerce as a means of hedging themselves against possible loss through fluctuations in price; that the transactions and prices of grain on such boards of trade are susceptible to speculation, manipulation, and control, and sudden or unreasonable fluctuations in the prices thereof frequently occur as a result of such speculation, manipulation, or control, which are detrimental to the producer or the consumer and the persons handling grain and products and by-products thereof in interstate commerce, and that such fluctuations in prices are an obstruction to and a burden upon interstate commerce in grain and the products and by-products thereof and render regulation imperative for the protection of such commerce and the national public interest therein (Sept. 21, 1922, c. 369, § 8, 42 Stat. 999).

expressly set forth in Section 5 of the Act, and one of the conditions is that the governing board of the contract market shall require members to make reports in accordance with the rules and regulations of the Secretary of Agriculture.

Respondent has no constitutional right to trading privileges on any grain exchange. This is shown by the fact that under Section 6 (a) the Commission may deprive him of trading privileges for the wrongdoing of the grain exchange itself by suspending or revoking the contract market designation of the grain exchange upon the finding of certain violations of the Act by the exchange. Thus, if the contract market designation of the Board of Trade should be suspended or revoked on account of wrongful action of the Board, respondent herein and others like him would be without a place in Chicago lawfully to trade in grain futures. They would thus be unable to trade in grain futures for the period named in the suspension order, notwithstanding the absence of unlawful conduct on their own part. Economically the suspension or revocation of the contract market designation of the Board of Trade would probably affect respondent quite as seriously as an order directing that contract markets be closed to him on account of his own unlawful conduct. Yet it certainly would not seriously be contended that respondent has any constitutional right to keep the Board of Trade open in the face of its own unlawful conduct.

Likewise respondent has no constitutional right to trading privileges on the Board of Trade unless he complies with the conditions to such trading imposed by law. Although there are some criminal provisions in the Grain Futures Act (Section 9), failure to report holdings and transactions required to be reported and attempts to manipulate prices are not made crimes. A person who fails properly to report, or who attempts to manipulate prices, merely loses his trading privileges that are permitted by statute only upon conditions which such person has violated. It is properly within the function of a regulatory body to determine whether or not the conditions to the enjoyment of privileges permitted by law have been met. Subject only to judicial review within appropriate limits, such a regulatory body may order contract markets closed to persons who breach the conditions upon which business may be carried on there.

That this is not a criminal proceeding is clear from the opinion of the Circuit Court of Appeals for the Seventh Circuit in *Board of Trade* v. *Wallace,* 67 F. (2d) 402 (certiorari denied 291 U. S. 680), in which the same point was made with respect to an order of the Commission entered against the Board of Trade under Section 6 (a). In that case the court said (at p. 407):

> Appellant raises the contention that paragraph (a) of section 6 of the Grain Futures Act, which authorizes suspension by the statutory commission of a contract mar-

ket designation in case the designatee transgresses the act, is unconstitutional because such a proceeding "is essentially criminal" and is in derogation of section 2 of article 3 of the Constitution, which provides that trial of crimes shall be by jury.

The premise that this is in essence a criminal proceeding rests wholly in assertion; no authority is cited in support. We see nothing of criminal nature in a proceeding for the revocation of a license or permit or designation granted under the authority of a statute which also authorizes revocation in case the grantee transgresses the statute.

* * * * *

Granted the constitutional power to designate boards of trade as contract markets upon application by the boards, we perceive no reason why Congress might not properly lodge with some instrumentality the power to suspend or revoke such designation upon sufficient cause, first according reasonable opportunity for defending against any charge, as well as for judicial review of any suspending order.

Thus, in the consideration of respondent's arguments and authorities, it is fundamental that the instant proceeding to close contract markets for a specified period to one who has improperly used the facilities of a contract market is not a criminal proceeding but that it is a proper exercise of regulatory power under the commerce clause. The cases relied upon by respondent do not apply to such a situation as is involved in the instant case.

Wong Wing v. *United States,* 163 U. S. 228, relied upon by respondent in the court below, held that Congress could not authorize the punishment of aliens who are illegally in the United States without affording a judicial trial to establish the guilt of the accused. The statute involved in that case undertook to authorize the punishment, by imprisonment at hard labor, of Chinese persons who were unlawfully in this country. Under the statute the sentence could be imposed by any judge, justice, or commissioner of the United States, without a jury trial. This Court held that the punishment provided for was infamous, and that it could not be inflicted without a jury trial. Indeed, the purport of that decision is distinctly limited by the following language in the opinion (at p. 237):

> It is not consistent with the theory of our government that the legislature should, after having defined an offense as an infamous crime, find the fact of guilt and adjudge the punishment by one of its own agents.

It is a far cry from imprisonment at hard labor to denial of market privileges on a contract market which operates under strict governmental supervision! The *Wong Wing* case merely holds that criminal punishment cannot be inflicted without a jury trial—a proposition of time-honored validity which petitioners certainly do not dispute. But it has no applicability to the withdrawal of

trading privileges on a public market from one who has violated the conditions of dealing on that market. The *Wong Wing* case applies only to punishment for crime, and in *Board of Trade* v. *Wallace,* it was held that the type of proceeding in question is not criminal. The *Wong Wing* case, therefore, does not apply.

Respondent contends that a person may not constitutionally be suspended on account of past actions. But there are many instances of statutes providing for suspension or revocation of privileges by administrative action for offenses not in the process of commission at the time of the suspension.[20] Indeed, the language of the provision for suspending registrations under the Packers and Stockyards Act relates expressly to suspension on account of past offenses. That provision is as follows:

> * * * the Secretary of Agriculture may require reasonable bonds from every market agency and dealer, under such rules and regulations as he may prescribe, to secure the performance of their obligations, and whenever, after due notice and hearing, the Secretary finds any registrant is insolvent *or has violated any provision of said Act* he may issue an order suspending such registrant for a reasonable specified period. Such order of suspension shall take effect

[20] See the discussion at pp. 108–114, *infra.*

> within not less than five days, unless suspended or modified or set aside by the Secretary of Agriculture or a court of competent jurisdiction. (Feb. 10, 1925, c. 200, 43 Stat. 851; 7 U. S. C. A., Sec. 204.) [Italics supplied.]

It was under authority of the above provision that the ninety-day suspension order, upheld in *Farmers' Livestock Commission Company* v. *United States,* 54 F. (2d) 375, was entered.

B. SECTION 3(b) AS CONSTRUED BY THE COMMISSION DOES NOT VIOLATE THE JURY TRIAL PROVISIONS OF THE SIXTH AND SEVENTH AMENDMENTS TO THE CONSTITUTION

Much of what already has been said in the preceding pages is applicable in answer to respondent's claim that he is entitled to jury trial before trading privileges can constitutionally be denied him. Respondent's contentions in this respect have been completely answered in *Farmers' Livestock Commission Co.* v. *United States,* 54 F. (2d) 375. Petitioners in that case sought to enjoin enforcement of an order entered pursuant to the Packers and Stockyards Act which directed certain market agencies to cease and desist from a boycott of other market agencies, and also provided that the registration of the market agencies participating in such boycott should be suspended for ninety days. Section 303 of the Packers and Stockyards Act requires registration with the Secretary of Agriculture of market agencies and dealers at public stockyards, and forbids carrying on

business without such a registration. The Secretary of Agriculture also has power under other provisions to suspend for a reasonable specified period the registration of any registrant who has violated any provision of the Act.

Both the cease and desist and suspension provisions of the order challenged in the *Farmer's Livestock Commission Co.* case were upheld although vigorously attacked by the petitioners who contended that the order was unconstitutional in that it provided a penalty, by way of forfeiture of the right to do business, without a jury trial. The specially constituted three-judge District Court rejected the above argument, saying (at p. 382):

> The order of suspension is authorized by statute and within the discretion of the Secretary. It is therefore beyond our power to restrain the same.

In that case the court also said (at p. 738):

> The withdrawal of a license or suspension from registration is merely the withdrawal of a government permit to engage in a business in which the licensee has no inherent right to engage, but in which he may participate only upon compliance with the conditions imposed by the government. If the government has the right to supervise the business, it may fix the conditions upon which parties may engage therein, and may, without the intervention of a jury, withdraw such permission when satisfied that the conditions are being violated.

In the findings of fact and conclusions of law entered in that case the court found that all of the provisions of the Packers and Stockyards Act under which the Secretary acted were constitutional and valid, and that the Secretary had jurisdiction to institute the proceedings on his own motion and to enter the order complained of.

The provisions of the Sixth Amendment which guarantee right of trial by jury apply only to proceedings technically criminal in nature. *United States* v. *Zucker,* 161 U. S. 475, 481. They do not apply, for instance, to civil actions for the recovery of penalties (*Oceanic Steam Navigation Company* v. *Stranahan,* 214 U. S. 320; *Hepner* v. *United States,* 213 U. S. 103), or to contempt proceedings for violation of a court injunction. *In re Debs,* 158 U. S. 564, 594. The jury trial guaranties of the Seventh Amendment, on the other hand, apply only to suits of the type prosecutable at common law at the time the amendment was adopted. *Capital Traction Company* v. *Hof,* 174 U. S. 1, 23; *Shields* v. *Thomas,* 18 How. 253, 262.

The denial of the right to trade on a contract market, therefore, does not conflict with either of these amendments. It is merely the withdrawal or suspension of permission to continue to engage in business upon a contract market because of a person's infringement of the rules of the market.

Statutes authorizing the revocation of licenses by administrative action without a jury were also

sustained in *Hall* v. *Geiger-Jones Co.*, 242 U. S. 539, and *Redmond & Company* v. *Michigan Securities Commission*, 222 Mich. 1, 192 N. W. 688.

In *Hall* v. *Geiger-Jones Co., supra*, the constitutionality of the Ohio "Blue Sky Laws" was upheld by this Court. That Act provided for licensing dealers in stocks and other securities only when a commissioner was satisfied of the good business repute of the applicant. The commissioner could revoke a license upon ascertaining that a licensee: (a) was of bad business repute; (b) *had violated* any of the provisions of the Act; or (c) *had engaged*, or was about to engage, under favor of such license, in illegitimate business or fraudulent transactions. Thus the statute clearly authorized revocation on account of past violations.

In *Redmond & Company* v. *Michigan Securities Commission, supra*, the Supreme Court of Michigan upheld that State's "Blue Sky Law" by which a commission was authorized to revoke for "good cause" a license to sell securities. The order of revocation under review was based upon findings with respect to past conduct. In upholding the order, the court said (at p. 6):

> Revocation of a license for good cause constitutes no penalization of the business licensed; it strikes down the power of those engaged in the business to employ the license contrary to declared public policy or common honesty.

It has repeatedly been held that the revocation of a license or permit to sell intoxicating liquors on account of the past conduct of the holder of the license or permit, without trial by jury, is constitutional. *People ex rel. Presmeyer* v. *Commissioners of Police,* 59 N. Y. 92; *Voight* v. *Board of Excise Commissioners,* 59 N. J. L. 358, 36 Atl. 686; *Cherry* v. *The Commonwealth,* 78 Va. 375; *Lyman* v. *Erie County Athletic Club,* 46 App. Div. 387, 61 N. Y. 884, aff'd. 163 N. Y. 552, 57 N. E. 1115; *Premier Cereal & Beverage Co.* v. *Pennsylvania Alcohol Permit Board,* 292 Pa. 127, 140 Atl. 858. It has also frequently been held that the licenses of physicians may constitutionally be revoked without trial by jury. *In re Smith,* 10 Wend. (N. Y.) 449; *Munk* v. *Frink,* 81 Nebr. 631, 116 N. W. 525; *State* v. *Hanson,* 201 Iowa 579, 207 N. W. 769; *State Board of Medical Examiners* v. *Macy,* 92 Wash. 614, 159 Pac. 801. The same principles have been applied to the revocation of licenses by administrative authority for other types of business. See *State* v. *Armeno,* 29 R. I. 431, 72 Atl. 216 (revocation of license to practice as a barber); *Gregory* v. *Hecke,* 73 Cal. App. 268, 238 Pac. 787 (revcation of license to manufacture and sell a poisonous germicide); *Morley* v. *Police Commissioner of Boston,* 261 Mass. 269, 159 N. E. 41; cert. den. 276 U. S. 625 (revocation of a license to operate taxicab).

See also *United States Industrial Alcohol Co.* v. *Blair,* 6 F. (2d) 658, 660; *Caserta* v. *Mills,* 28 F.

(2d) 637, 638; *John Low* v. *Commissioners of Pilotage,* R. M. Charlton Repts. (Ga. 1830) 302; *La Croix* v. *County Commissioners,* 50 Conn. 321.

In view of the undoubted applicability of the principles stated above, and the wealth of judicial authority which supports them, it is patent that cases which hold unconstitutional criminal statutes providing for punishment by one form or another without jury trial are not in point. It is likewise patent that cases involving proceedings technically civil in form, although providing in effect for criminal punishment, are not in point. Thus, cases involving civil proceedings for the forfeiture of goods under statutes making such forfeiture part of the penalty for violation, are not applicable. The case of *Boyd* v. *United States,* 116 U. S. 616, cited by respondent in the court below, is therefore inapplicable both on principle and in view of the numerous decisions upholding as against constitutional attack the right of regulatory bodies to suspend or revoke licenses or permits of persons who have violated the law in stated respects.

Respondent contended, however, in the court below that the cases with reference to revocation of licenses by administrative action do not apply to him, since he is not licensed. Thus, respondent undertook to draw a distinction between his situation and that of the Board of Trade under Section 6 (a), saying in effect that the Board of Trade has been technically designated as a contract market, and the Government may withdraw that which

it has given. On the other hand, it is contended that a person, such as respondent, who trades on a contract market is not licensed, and that such markets are open to everybody. In this connection respondent points out that Section 6 (b) of the Grain Futures Act in terms applies to "any person," and not merely to members of the Board of Trade.

But respondent's constitutional right to trade in grain futures on a contract market can be no greater than the constitutional right of such a contract market to operate. Respondent would probably concede (as he would have to do in view of the decision in the case of *Board of Trade* v. *Wallace,* 67 F. (2d) 402, that the contract market designation of the Board of Trade may constitutionally be suspended by the Commission. Respondent, then, cannot logically or consistently maintain that he has constitutional rights on a contract market which he may not lose by order of the Commission—rights which rise higher than those of the contract market itself.

Here, in fact, the statute is more favorable to respondent than it would be if it required a technical license or permit as a condition of doing business. Respondent is not required to take out any license or permit, under the statute, but may freely engage in business on the market so long as he complies with the law.

It is submitted that the principles laid down in the cases above discussed are fully applicable in the

instant proceeding, and that respondent's right to engage in futures trading is no greater than it would be if he were operating subject to a technical license. His right to operate on a contract market exists only so long as he complies with the law to which that market and persons trading thereon are subject.

C. THE COMMISSION AS CONSTITUTED IS A CONSTITUTIONAL TRIBUNAL

Respondent contends that the Grain Futures Act is unconstitutional because the Commission created by the Act does not meet the requirements of due process of law, in that the Secretary of Agriculture is a member of the Commission and also institutes the proceedings as complainant. The one case cited by respondent in the court below in support of this proposition (*Tumey* v. *Ohio*, 273 U. S. 510) may be distinguished upon the obviously peculiar facts involved therein relating to the official and financial interest in the proceeding of the public officer there involved.

It should be noted that as a general proposition practically all statutes relating to the issuance and revocation of licenses or permits to engage in certain businesses vest in the same governmental authority the power to supervise the operations of those subject to license or permit, to charge licensees and holders of permits with violations, to hear complaints, to investigate, and to suspend and revoke for breach of conditions. Such statutes are not considered unconstitutional.

Insofar as the instant case is concerned the same point was made in *Farmers' Livestock Commission Company* v. *United States,* 54 F. (2d) 375, in which objection was taken to the participation of the Secretary of Agriculture in that case. In that case the Secretary under the Packers and Stockyards Act was the whole tribunal—not merely one member of it. In that case, the investigation which led to the hearing and ultimately to the order was instituted by order of the Secretary himself, and the cease and desist and suspension order was subsequently entered by the Secretary after notice and hearing. The contention was made that the procedure denied petitioners due process of law, and, furthermore, that the Secretary was disqualified because of his *ex officio* membership on the Federal Farm Board, which it was alleged had a direct financial interest in the market agencies that had been boycotted by petitioners therein. These contentions were all rejected by the court. In discussing the matter the court said (pp. 381–382):

> Plaintiffs complain that the Secretary occupies a dual capacity as prosecutor and judge. As stated by another court, this criticism is "too unsubstantial to justify discussion." *National Harness Manufacturers' Association* v. *Federal Trade Commission* (C. C. A.) 268 F. 705, 707. This rule follows from the premise that a regulatory commission must investigate and ascertain the facts necessary to the proper performance of its regulatory or administrative

duty. Private parties may make complaint, but if such parties are not sufficiently interested to complain, or refrain from so doing because to do so would be against their own interest, the protection of the public's interest demands that the commission be so empowered and equipped as to be able to assure that the real facts will be produced. Such function is no bar to fair judicial ruling upon those facts; rather, such powers and equipment tend to procure the more efficient, just, and impartial discharge of the regulatory powers of the office.

* * * * *

It must be assumed that the officers administering the law are properly qualified. It is the Secretary's duty to administer the Packers and Stockyards Act, under which this inquiry was conducted. It was his duty to act also as an *ex-officio* director of the Farm Board under the Agricultural Marketing Act. The Executive Department selects such administrative officers. There is no legal requirement that they shall be chosen from any one profession or another. The qualifications of the Secretary and Acting Secretary are not subject to judicial review in such actions as this for the purpose of interfering with any of the administrative acts under power vested in the office by law.

See also *National Harness Manufacturers' Association* v. *Federal Trade Commission,* 268 Fed. 705, 707.

D. THE STANDARDS IN THE ACT ARE SUFFICIENTLY DEFINITE TO SUPPORT THE ORDER

Respondent also contends that the Grain Futures Act does not sufficiently define the phrase "is attempting to manipulate the market price of grain."

Obviously, the question of whether the phrase "is attempting to manipulate the market price of grain" would be sufficiently definite to serve as a standard in a criminal statute, is not involved in any manner in this case.

Nor does the order involved herein depend for its validity upon the finding that respondent attempted to manipulate the price of grain. The order is justified by the findings that respondent failed to report his holdings and transactions when required by the Act and regulations so to do, and that he rendered certain false reports. These findings would support the order, even if there were no finding that respondent had attempted to manipulate the price of grain.

But the point which respondent undertakes to make with respect to the definiteness of the standard is wholly without merit anyway. The same argument was completely answered in the case of *Bartlett Frazier Co.* v. *Hyde,* 65 F. (2d) 350 (cert. den., 290 U. S. 654), in which the court said (at p. 354):

> It is urged that the statute makes use of the term "manipulation" without defining what is meant by it, and that for this reason

the statute is void. If there were merit in this suggestion it would seem that in the Olsen case the court would not have failed to discover it. In several instances the opinion employs the word "manipulation":

"* * * the act only purports to regulate interstate commerce and sales of grain for future delivery on boards of trade because it finds that by *manipulation* they have become a constantly recurring burden and obstruction to that commerce." (Page 32 of 262 U. S., 43 S. Ct. 470, 476, 67 L. Ed. 839.)

"It is clear from the citations, in the statement of the case, of evidence before committees of investigation as to *manipulations* of the futures market and their effect, that we would be unwarranted in rejecting the finding of Congress as unreasonable, and that in our inquiry as to the validity of this legislation we must accept the view that such *manipulation* does work to the detriment of producers, consumers, shippers, and legitimate dealers in interstate commerce in grain and that it is a real abuse." (Page 37 of 262 U. S., 43 S. Ct. 470, 477, 67 L. Ed. 839.)

Again, on pages 39 and 40 of 262 U. S., 43 S. Ct. 470, 478, 67 L. Ed. 839, it is said: "A futures market lends itself to such *manipulation* much more readily than a cash market. * * * If a corner and the enhancement of prices produced by buying futures directly burden interstate commerce in the article whose price is enhanced, it

would seem to follow that *manipulations* of futures which unduly depress prices of grain in interstate commerce and directly influence consignment in that commerce are equally direct. * * * By reason and authority, therefore, in determining the validity of this act, we are prevented from questioning the conclusion of Congress that *manipulation* of the market for futures on the Chicago Board of Trade may, and from time to time does, directly burden and obstruct commerce between the states in grain, and that it recurs and is a constantly possible danger."

Even if we were disposed to attribute to the term undue uncertainty or indefiniteness, *Chicago Board of Trade* v. *Olsen* would forbid.

That the prevention of manipulation is a legitimate legislative object was expressly recognized in *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1, 39–40. Indeed, the principal point involved in the *Olsen* case was whether the statutory scheme created by the Grain Futures Act for the prevention of manipulation was within the power of Congress to create under the commerce clause of the Federal Constitution. It is implicit in the opinion in the *Olsen* case that the object sought to be accomplished, viz, prevention of manipulation, is stated in the Act with sufficient definiteness.

The failure properly to report, however, is *per se* sufficient to support the order challenged herein. The reporting requirements are set out in detail in

the rules and regulations, *supra*, pp. 9–13, and respondent has violated them. Section 6 (b) expressly makes violation of the rules and regulations ground for an order closing contract markets to the violator. If accurate and honest reports as prescribed by the rules and regulations authorized by the Act are not rendered, the whole scheme of regulation undertaken by the Act and upheld in *Chicago Board of Trade* v. *Olsen, supra,* breaks down.

CONCLUSION

It is respectfully submitted that the judgment of the Circuit Court of Appeals should be reversed.

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APRIL 1936

APPENDIX A

Respondent made no reports whatsoever to the Grain Futures Administration in 1930. There are listed below his commitments and transactions in wheat futures on certain typical days in that year.

Date	Firm	Account	Bought	Sold	Long	Short
1930	1930 MAY WHEAT					
Feb. 4	Arthur W. Cutten Accounts (Exhibit 407):					
	Clement, Curtis & Co	A. W. C				300,000
	F. B. Keech & Co	"				210,000
	James Kidston & Co	No. 8			100,000	610,000
	Controlled accounts (Exhibit 409): Clement, Curtis & Co.	M. C				500,000
					100,000	1,110,000
	1930 JULY WHEAT					
Feb. 4	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co	No. 20		495,000		495,000
	Clement, Curtis & Co	A. W. C		200,000		600,000
	F. B. Keech & Co	"		300,000		300,000
	James Kidston & Co	No. 8		200,000		400,000
						1,795,000
	Controlled accounts (Exhibit 409):					
	Clement, Curtis & Co	M. C		200,000		800,000
	Bartlett Frazier Co	Mrs. No. 7		5,000		5,000
				1,400,000		2,600,000
	1930 MAY WHEAT					
Feb. 5	Arthur W. Cutten Accounts (Exhibit 407):					
	Clement, Curtis & Co	A. W. C		200,000		500,000
	F. B. Keech & Co	"				310,000
	James Kidston & Co	No. 8			100,000	810,000
	Controlled Accounts (Exhibit 409): Clement, Curtis & Co.	M. C				500,000
				200,000	100,000	1,310,000

Date	Firm	Account	Bought	Sold	Long	Short
1930	1930 JULY WHEAT					
Feb. 5	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co.	No. 20				495,000
	Clement, Curtis & Co.	A. W. C.				600,000
	F. B. Keech & Co.	"				300,000
	James Kidston & Co.	No. 8				400,000
						1,795,000
	Controlled Accounts (Exhibit 409):					
	Bartlett Frazier Co.	Mrs. No. 7				5,000
	Clement, Curtis & Co.	M. C.				800,000
						2,600,000
	1930 MAY WHEAT					
Feb. 6	Arthur W. Cutten Accounts (Exhibit 407):					
	Clement, Curtis & Co.	A. W. C.	300,000			200,000
	F. B. Keech & Co.	"				310,000
						510,000
	James Kidston & Co.	No. 8			100,000	
	Controlled Accounts (Exhibit 409): Clement, Curtis & Co.	M. C.	300,000			200,000
			600,000		100,000	710,000
	1930 JULY WHEAT					
Feb. 6	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co.	No. 20				495,000
	Clement, Curtis & Co.	A. W. C.		350,000		950,000
	F. B. Keech & Co.	"		10,000		310,000
	James Kidston & Co.	No. 8		200,000		600,000
						2,355,000
	Controlled Accounts (Exhibit 409):					
	Bartlett Frazier Co.	Mrs. No. 7				5,000
	Clement, Curtis & Co.	M. C.				800,000
				560,000		3,160,000
	1930 SEPTEMBER WHEAT					
June 21	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co.	No. 7				495,000
	" " "	No. 20				495,000
	F. B. Keech & Co.	A. W. C.				400,000
	James Kidston & Co.	No. 8				275,000
	Uhlmann Grain Co.	37 Spl.		100,000		100,000
						1,765,000

Date	Firm	Account	Bought	Sold	Long	Short
1930						
June 21	Controlled Accounts (Exhibit 409):					
	Bartlett Frazier Co	M. C				410,000
	* * *	D. S				600,000
	Clement, Curtis & Co	M. C				200,000
	Jackson Bros. Boesel & Co.	R. C				200,000
	F. B. Keech & Co	M. C				500,000
				100,000		3,675,000
	1930 DECEMBER WHEAT					
June 21	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co	No. 7				200,000
	Clement, Curtis & Co	A. W. C				400,000
	Jackson Bros. Boesel & Co.	C-209		200,000		200,000
	* * *	L. F. C		200,000		200,000
	F. B. Keech & Co	A. W. C				200,000
	Uhlmann Grain Co	57 Spl		100,000		100,000
						1,350,000
	Controlled Accounts (Exhibit 409):					
	Bartlett Frazier Co	D. S		600,000		600,000
	Clement, Curtis & Co	M. C		200,000		400,000
	Jackson Bros. Boesel & Co.	R. C		100,000		300,000
	F. B. Keech & Co	R. J. C		400,000		400,000
	* * *	M. C		200,000		200,000
				2,000,000		3,250,000
	1930 SEPTEMBER WHEAT					
June 23	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co	No. 7				495,000
	* * *	No. 20				495,000
	F. B. Keech & Co	A. W. C		10,000		410,000
	James Kidston & Co	No. 8				275,000
	Uhlmann Grain Co	57 Spl				100,000
						1,775,000
	Controlled Accounts (Exhibit 409):					
	Bartlett Frazier Co	M. C				410,000
	* * *	D. S				600,000
	Clement, Curtis & Co	M. C				200,000
	Jackson Bros. Boesel & Co.	R. C				200,000
	F. B. Keech & Co	M. C	10,000			490,000
			10,000	10,000		3,675,000

Date	Firm	Account	Bought	Sold	Long	Short
	1930 DECEMBER WHEAT					
1930						
June 23	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co	No. 7				200,000
	Clement, Curtis & Co	A. W. C				400,000
	Jackson Bros. Boesel & Co.	C-209				250,000
	" " "	L. F. C				200,000
	F. B. Keech & Co	A. W. C		200,000		400,000
	Uhlmann Grain Co	57 Spl				100,000
						1,550,000
	Controlled Accounts (Exhibit 409):					
	Bartlett Frazier Co	D. S				600,000
	Clement, Curtis & Co	M. C				400,000
	Jackson Bros. Boesel & Co.	R. C				300,000
	F. B. Keech & Co	R. J. C				400,000
	" "	M. C				200,000
				200,000		3,450,000
	1930 DECEMBER WHEAT					
June 27	Arthur W. Cutten Accounts (Exhibit 407):					
	Clement, Curtis & Co	A. W. C				400,000
	Jackson Bros. Boesel & Co.	C-209				250,000
	" " "	L. F. C				200,000
	F. B. Keech & Co	A. W. C				400,000
	Uhlmann Grain Co	57 Spl				100,000
						1,350,000
	Controlled Accounts (Exhibit 409):					
	F. B. Keech & Co	R. J. C				400,000
	" " "	E. M. L. C				200,000
	" " "	M. C				200,000
	Jackson Bros. Boesel & Co.	R. C	300,000		(1)	(1)
			300,000			2,150,000
June 30	Arthur W. Cutten Accounts (Exhibit 407):					
	Clement, Curtis & Co	A. W. C				400,000
	" "	209		200,000		200,000
	Jackson Bros. Boesel & Co.	C-209		200,000		450,000
	" " "	L. F. C				200,000
	F. B. Keech & Co	A. W. C				400,000
	Uhlmann Grain Co	57 Spl				100,000
						1,750,000
	Controlled Accounts (Exhibit 409):					
	Clement, Curtis & Co	M. C		300,000		300,000
	F. B. Keech & Co	R. J. C				400,000
	" " "	E. M. L. C				200,000
				700,000		2,650,000

[1] Even.

APPENDIX B

There are listed below a number of typical days in 1931 when respondent had commitments in a given wheat future in excess of 500,000 bushels and also had transactions in that future, and on which he made no report to the Grain Futures Administration.

Date	Firm	Account	Bought	Sold	Long	Short
	1931 JULY WHEAT					
1931						
Jan. 2	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co	No. 7	200,000		(1)	(1)
	" " "	No. 20	200,000			100,000
	Clement, Curtis & Co	A. W. C				600,000
	Jackson Bros. Boesel & Co.	No. 40				475,000
	" " " "	C-209				40,000
	F. B. Keech & Co	A. W. C				200,000
	James Kidston & Co	No. 8	130,000			130,000
	Uhlmann Grain Co	57 Spl				495,000
						2,040,000
	F. B. Keech & Co	L	100,000	100,000	(1)	(1)
	Controlled Accounts (Exhibit 409):					
	Jackson Bros. Boesel & Co.	R. C		200,000		200,000
	Uhlmann Grain Co	57a Spl				495,000
			630,000	300,000		2,735,000
Jan. 3	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co	No. 20				100,000
	Clement, Curtis & Co	A. W. C				600,000
	Jackson Bros. Boesel & Co.	No. 40				475,000
	" " "	C-209				40,000
	F. B. Keech & Co	A. W. C				200,000
	James Kidston & Co	No. 8				130,000
	Uhlmann Grain Co	57 Spl				495,000
						2,040,000
	Controlled Accounts (Exhibit 409):					
	Jackson Bros. Boesel & Co.	R. C				200,000
	Uhlmann Grain Co	57a Spl				495,000
						2,735,000

[1] Even.

Date	Firm	Account	Bought	Sold	Long	Short
1931						
Jan. 31	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co	No. 7				420,000
	Clement, Curtis & Co	A. W. C				320,000
	Jackson Bros. Boesel & Co.	No. 40				400,000
	" " "	C-209				465,000
	F. B. Keech & Co	A. W. C				500,000
	" "	L				205,000
	James Kidston & Co	No. 8	100,000			275,000
	Uhlmann Grain Co	57 Spl				495,000
						3,080,000
	Controlled Accounts (Exhibit 409): Uhlmann Grain Co	57a Spl				395,000
			100,000			3,475,000
Feb. 3	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co	N				420,000
	Clement, Curtis & Co	A				320,000
	Jackson Bros. Boesel & Co.	No				400,000
	" " "	C-209				465,000
	F. B. Keech & Co	A. W. C				500,000
	" "	L				205,000
	James Kidston & Co	No. 8				475,000
	Uhlmann Grain Co	57 Spl	395,000			100,000
						2,885,000
	Controlled Accounts (Exhibit 409):					
	Jackson Bros. Boesel & Co.	R. C				200,000
	Uhlmann Grain Co	57a Spl				395,000
			395,000			3,480,000
Feb. 10	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co	No. 7	120,000			300,000
	Clement, Curtis & Co	A. W. C				200,000
	Jackson Bros. Boesel & Co.	No. 40				400,000
	" " " "	C-209				465,000
	F. B. Keech & Co	A. W. C				150,000
	James Kidston & Co	No. 8	155,000	(1)		1,515,000
	Uhlmann Grain Co	57 Spl	200,000	(1)		
	Controlled Accounts (Exhibit 409):					
	Jackson Bros. Boesel & Co.	R. C				20,000
	Uhlmann Grain Co	57a Spl	85,000			310,000
			560,000			1,845,000

(1) Even.

Date	Firm	Account	Bought	Sold	Long	Short
1931	1931 SEPTEMBER WHEAT					
Apr. 2	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co	No. 7				250,000
	" "	No. 20				350,000
	Clement, Curtis & Co	A. W. C				370,000
	Jackson Bros. Boesel & Co.	No. 40		130,000		450,000
	F. B. Keech & Co	A. W. C		100,000		345,000
	" "	L				155,000
	James Kidston & Co	No. 8				400,000
	Uhlmann Grain Co	57 Spl				400,000
				250,000		2,720,000
Apr. 4	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co	No. 7				250,000
	" "	No. 20				350,000
	Clement, Curtis & Co	A. W. C				370,000
	Jackson Bros. Boesel & Co.	No. 40				450,000
	F. B. Keech & Co	A. W. C				345,000
	James Kidston & Co	No. 8				400,000
	Wm. J. Springer	No. 20		100,000		100,000
	Uhlmann Grain Co	57 Spl				400,000
	F. B. Keech & Co	L				155,000
				100,000		2,820,000
Apr. 10	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co	No. 7				250,000
	" "	No. 20				350,000
	Clement, Curtis & Co	A. W. C				370,000
	Jackson Bros. Boesel & Co.	No. 40				450,000
	" " "	C-209		250,000		250,000
	F. B. Keech & Co	A. W. C		200,000		545,000
	" "	L				155,000
	James Kidston & Co	No. 8				400,000
	Wm. J. Springer	No. 20				100,000
	Uhlmann Grain Co	57 Spl				400,000
				450,000		3,270,000
	1931 JULY WHEAT					
Apr. 10	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co	No. 7				300,000
	" "	No. 20				100,000
	Clement, Curtis & Co	A. W. C				490,000
	Jackson Bros. Boesel & Co.	No. 40				420,000
	" " "	C-209				465,000
	F. B. Keech & Co	A. W. C				450,000
	" "	L		200,000		200,000
	James Kidston & Co	No. 8				300,000
	Uhlmann Grain Co	57 Spl				200,000
						2,925,000

Date	Firm	Account	Bought	Sold	Long	Short
1931						
April 10	Controlled Accounts (Exhibit 409):					
	Jackson Bros. Boesel & Co.	R. C				165,000
	Uhlmann Grain Co	57a Spl				310,000
				200,000		3,400,000
Apr. 13	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co	No. 7				300,000
	" "	No. 20				100,000
	Clement, Curtis & Co	A. W. C				490,000
	Jackson Bros. Boesel & Co.	No. 40				420,000
	" " "	C-209				465,000
	F. B. Keech & Co	A. W. C				450,000
	" "	L				200,000
	Uhlmann Grain Co	57 Spl				200,000
	James Kidston & Co	No. 8	300,000	(1)		
						2,625,000
	Controlled Accounts (Exhibit 409):					
	Jackson Bros., Boesel & Co	R. C				165,000
	Uhlmann Grain Co	57a Spl				310,000
			300,000			3,100,000
Apr. 14	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co	No. 7				300,000
	" "	No. 20				100,000
	Jackson Bros. Boesel & Co.	No. 40				420,000
	" " "	C-209				465,000
	F. B. Keech & Co	A. W. C				450,000
	" "	L				200,000
	Uhlmann Grain Co	57 Spl				200,000
						2,135,000
	Clement, Curtis & Co	A. W. C	500,000		10,000	
	James Kidston & Co	No. 8	50,000		50,000	
	Controlled Accounts Exhibit (409):					
	Jackson Bros. Boesel & Co.	R. C				165,000
	Uhlmann Grain Co	57a Spl				310,000
			550,000		60,000	2,610,000

[1] Even.

Date	Firm	Account	Bought	Sold	Long	Short
	1931 SEPTEMBER WHEAT					
1931						
Apr. 14	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co	No. 7				250,000
	" "	No. 20				350,000
	Clement, Curtis & Co	A. W. C.	100,000			270,000
	Jackson Bros. Boesel & Co.	No. 40				450,000
	" " "	C-209				250,000
	F. B. Keech & Co	A. W. C.				545,000
	" " "	L				155,000
	James Kidston & Co	No. 8				400,000
	Wm. J. Springer	No. 20				100,000
	Uhlmann Grain Co	57 Spl				400,000
			100,000			3,170,000

APPENDIX C

This appendix compares respondent's actual market commitments and transactions in wheat futures on certain typical days in 1931 with the reports he made to the Grain Futures Administration for those days.

	Long	Short
As reported (Ex. 367)		
Jan. 26:		
May Oats. Jackson	1,005,000	
July Wheat. Keech		705,000
May Corn. "		500,000
May Corn. Clement, Curtis & Co.		500,000
Arthur W. Cutten Accounts (Ex. 407)		
July Wheat:		
Bartlett Frazier. #7		420,000
Clement, Curtis & Co. AWC		320,000
Jackson Bros. Boesel & Co. #40		400,000
" " " " #209-C		465,000
F. B. Keech & Co. AWC		500,000
" " " L		205,000
James Kidston & Co. #8		375,000
Uhlmann Grain Co. #57		495,000
		3,180,000
Controlled Accounts (Ex. 409)		
July Wheat:		
Uhlmann Grain Co. #57a		395,000
Total Wheat Open		3,575,000

	Long	Short
As Reported (Ex. 372)		
Feb. 27:		
May Oats: Jackson Bros.	905,000	
Arthur W. Cutten Accounts (Ex. 407)		
May Wheat: Uhlmann Grain Co. #57		100,000
July "		
Bartlett Frazier & Co. #7		300,000
" " #20		100,000
Clement, Curtis & Co. AWC		200,000
Jackson Bros. Boesel & Co. #40		455,000
" " " " " #209-C		465,000
F. B. Keech & Co. AWC		350,000
James Kidston & Co. #8		100,000
Uhlmann Grain Co. #57		100,000
Total July Wheat		2,070,000
Sept. Wheat:		
Bartlett Frazier Co. #7		100,000
" " " #20		200,000
Clement, Curtis & Co. AWC		270,000
F. B. Keech & Co. AWC		100,000
Uhlmann Grain Co. #57		300,000
Total September Wheat		970,000
Total		3,140,000
Controlled Accounts (Ex. 409)		
July Wheat:		
Jackson Bros. Boesel & Co. RC		20,000
Uhlmann Grain Co. #57a		310,000
Total Wheat Open		3,470,000

		Long	Short
As Reported (Ex. 373)			
Mar. 14: May Oats:			
Jackson Bros.		600,000	
Arthur W. Cutten Accounts (Ex. 407)			
July Wheat:			
Bartlett Frazier Co.	#7		300,000
" " "	#20		100,000
Clement, Curtis & Co.	AWC		290,000
Jackson Bros. Boesel & Co.	#40		420,000
" " " " "	#209-C		465,000
F. B. Keech & Co.	AWC		350,000
James Kidston & Co.	#8		200,000
Uhlmann Grain Co.	#57		200,000
Total July Wheat			2,325,000
Sept. Wheat:			
Bartlett Frazier Co.	#7		150,000
" " "	#20		350,000
Clement, Curtis & Co.	AWC		270,000
Jackson Bros. Boesel & Co.	#40		100,000
F. B. Keech & Co.	AWC		200,000
" " " "	L		100,000
James Kidston & Co.	#8		100,000
Uhlmann Grain Co.	#57		400,000
Total Sept. Wheat			1,670,000
Total			3,995,000
Controlled Accounts (Ex. 409)			
July Wheat:			
Jackson Bros. Boesel & Co.	RC		65,000
Uhlmann Grain Co.	#57a		310,000
Total Wheat Open			4,370,000

	Long	Short
As reported (Ex. 374)		
Mar. 18:		
May Oats. Jackson Bros.	440,000	
Arthur W. Cutten Accounts (Ex. 407)		
Mar. 18:		
July Wheat:		
Bartlett Frazier Co. #7		300,000
" " " #20		100,000
Clement, Curtis & Co. AWC		290,000
Jackson Bros. Boesel & Co. #40		420,000
" " " " " #209-C		465,000
F. B. Keech & Co. AWC		350,000
James Kidston & Co. #8		300,000
Uhlmann Grain Co. #57		200,000
Total July Wheat		2,425,000
Sept. Wheat:		
Bartlett Frazier Co. #7		150,000
" " " #20		350,000
Clement, Curtis & Co. AWC		270,000
Jackson Bros. Boesel & Co. #40		100,000
F. B. Keech & Co. AWC		200,000
" " " " " L		100,000
James Kidston & Co. #8		100,000
Uhlmann Grain Co. #57		400,000
Total Sept. Wheat		1,670,000
Total		4,095,000
Controlled Accounts (Ex. 409)		
Mar. 18:		
July Wheat:		
Jackson Bros. Boesel & Co. RC		65,000
Uhlmann Grain Co. #57a		310,000
Total wheat open		4,470,000

	Long	Short
As Reported (Ex. 376)		
Nov. 20:		
May Wheat (1932): Bartlett Frazier Co.		100,000
Arthur W. Cutten Accounts (Ex. 407)		
Nov. 20:		
May Wheat:		
Bartlett Frazier Co. #7		100,000
Clement, Curtis & Co. CWA		200,000
" " " #209		210,000
Jackson Bros. Boesel & Co. #209-C Spl.		70,000
F. B. Keech & Co. L	195,000	
James Kidston & Co. #8		90,000
Wm. J. Springer. #20	15,000	
" " #30	135,000	
Uhlmann Grain Co. #57		200,000
Total May Wheat	345,000	870,000
Dec. Wheat:		
Jackson Bros. Boesel & Co. #209-C		200,000
" " " " #209-C Spl.		245,000
Total December Wheat		445,000
Total	345,000	1,315,000
Controlled Accounts (Ex. 409)		
Nov. 20:		
May Wheat:		
Bartlett Frazier Co. DS		400,000
Total Wheat Open	3[illegible]000	1,715,000

APPENDIX D

C. 369, 42 STAT. 998

An Act For the prevention and removal of obstructions and burdens upon interstate commerce in grain, by regulating transactions on grain future exchanges, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That This Act shall be known by the short title of "The Grain Futures Act."

SEC. 2 (a) For the purposes of this Act "contract of sale" shall be held to include sales, agreements of sale, and agreements to sell. The word "person" shall be construed to import the plural or singular, and shall include individuals, associations, partnerships, corporations, and trusts. The word "grain" shall be construed to mean wheat, corn, oats, barley, rye, flax, and sorghum. The term "future delivery", as used herein, shall not include any sale of cash grain for deferred shipment or delivery. The words "board of trade" shall be held to include and mean any exchange or association, whether incorporated or unincorporated, of persons who shall be engaged in the business of buying or selling grain or receiving the same for sale on consignment. The act, omission, or failure of any official, agent, or other person act-

ing for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person. The words "interstate commerce" shall be construed to mean commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof, or within any Territory or possession, or the District of Columbia.

(b) For the purposes of this Act (but not in any wise limiting the foregoing definition of interstate commerce) a transaction in respect to any article shall be considered to be in interstate commerce if such article is part of that current of commerce usual in the grain trade whereby grain and grain products and by-products thereof are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State, or for manufacture within the State and the shipment outside the State of the products resulting from such manufacture. Articles normally in such current of commerce shall not be considered out of such commerce through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act. For the purpose of this paragraph the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nation.

SEC. 3. Transactions in grain involving the sale thereof for future delivery as commonly conducted on boards of trade and known as "futures" are affected with a national public interest; that such transactions are carried on in large volume by the public generally and by persons engaged in the business of buying and selling grain and the products and by-products thereof in interstate commerce; that the prices involved in such transactions are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining the prices to the producer and the consumer of grain and the products and by-products thereof and to facilitate the movements thereof in interstate commerce; that such transactions are utilized by shippers, dealers, millers, and others engaged in handling grain and the products and by-products thereof in interstate commerce as a means of hedging themselves against possible loss through fluctuations in price; that the transactions and prices of grain on such boards of trade are susceptible to speculation, manipulation, and control, and sudden or unreasonable fluctuations in the prices thereof frequently occur as a result of such speculation, manipulation, or control, which are detrimental to the producer or the consumer and the persons handling grain and products and by-products thereof in interstate commerce, and that such fluctuations in prices are an obstruction to and a burden upon interstate commerce in grain and the products and by-products thereof and render regulation imperative for the protection of such commerce and the national public interest therein.

SEC. 4. It shall be unlawful for any person to deliver for transmission through the mails or in interstate commerce by telegraph, telephone, wireless, or other means of communication any offer to make or execute, or any confirmation of the execution of, or any quotation or report of the price of, any contract of sale of grain for future delivery on or subject to the rules of any board of trade in the United States, or for any person to make or execute such contract of sale, which is or may be used for (a) hedging any transaction in interstate commerce in grain or the products or by-products thereof, or (b) determining the price basis of any such transaction in interstate commerce, or (c) delivering grain sold, shipped, or received in interstate commerce for the fulfillment thereof, except—

(a) Where the seller is at the time of the making of such contract the owner of the actual physical property covered thereby, or is the grower thereof, or in case either party to the contract is the owner or renter of land on which the same is to be grown, or is an association of such owners, or growers of grain, or of such owners or renters of land; or

(b) Where such contract is made by or through a member of a board of trade which has been designated by the Secretary of Agriculture as a "contract market", as hereinafter provided, and if such contract is evidenced by a record in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery: *Provided,* That each board member shall keep such record for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct, which record shall at all times be open to the

inspection of any representative of the United States Department of Agriculture or the United States Department of Justice.

SEC. 5. The Secretary of Agriculture is hereby authorized and directed to designate any board of trade as a "contract market" when, and only when, such board of trade complies with and carries out the following conditions and requirements:

(a) When located at a terminal market where cash grain of the kind specified in the contracts of sale of grain for future delivery to be executed on such board is sold in sufficient volumes and under such conditions as fairly to reflect the general value of the grain and the differences in value between the various grades of such grain, and where there is available to such board of trade official inspection service approved by the Secretary of Agriculture for the purpose.

(b) When the governing board thereof provides for the making and filing by the board or any member thereof, as the Secretary of Agriculture may direct, of reports in accordance with the rules and regulations, and in such manner and form and at such times as may be prescribed by the Secretary of Agriculture, showing the details and terms of all transactions entered into by the board, or the members thereof, either in cash transactions consummated at, on, or in a board of trade, or transactions for future delivery, and when such governing board provides, in accordance with such rules and regulations, for the keeping of a record by the board or the members of the board of trade, as the Secretary of Agriculture may direct, showing the details and terms of all cash and future transactions entered into by them, consummated at, on,

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or in a board of trade, such record to be in permanent form, showing the parties to all such transactions, including the persons for whom made, any assignments or transfers thereof, with the parties thereto, and the manner in which said transactions are fulfilled, discharged, or terminated. Such record shall be required to be kept for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct, and shall at all times be open to the inspection of any representative of the United States Department of Agriculture or United States Department of Justice.

(c) When the governing board thereof provides for the prevention of dissemination by the board or any member thereof, of false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of grain in interstate commerce.

(d) When the governing board thereof provides for the prevention of manipulation of prices or the cornering of any grain by the dealers or operators upon such board.

(e) When the governing board thereof does not exclude from membership in, and all privileges on, such board of trade, any duly authorized representative of any lawfully formed and conducted cooperative association of producers having adequate financial responsibility which is engaged in cash grain business, if such association has complied, and agrees to comply, with such terms and conditions as are or may be imposed lawfully on other members of such board: *Provided,* That no rule of a contract market shall forbid or be construed to

forbid the return on a patronage basis by such cooperative association to its bona fide members of moneys collected in excess of the expense of conducting the business of such association.

(f) When the governing board provides for making effective the final orders or decisions entered pursuant to the provisions of paragraph (b) of section 6 of this Act.

SEC. 6. Any board of trade desiring to be designated a "contract market" shall make application to the Secretary of Agriculture for such designation and accompany the same with a showing that it complies with the above conditions, and with a sufficient assurance that it will continue to comply with the above requirements.

(a) A commission composed of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General is authorized to suspend for a period not to exceed six months or to revoke the designation of any board of trade as a "contract market" upon a showing that such board of trade has failed or is failing to comply with any of the above requirements or is not enforcing its rules of government made a condition of its designation as set forth in section 5. Such suspension or revocation shall only be after a notice to the officers of the board of trade affected and upon a hearing: *Provided,* That such suspension or revocation shall be final and conclusive unless within fifteen days after such suspension or revocation by the said commission such board of trade appeals to the circuit court of appeals for the circuit in which it has its principal place of business by filing with the clerk of such court a written petition praying that the order of the said commission be set aside or

modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such board of trade will pay the costs of the proceedings if the court so directs. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Secretary of Agriculture, chairman of said commission, or any member thereof, and the said commission shall forthwith prepare, certify, and file in the court a full and accurate transcript of the record in such proceedings, including the notice to the board of trade, a copy of the charges, the evidence, and the report and order. The testimony and evidence taken or submitted before the said commission duly certified and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the circuit court of appeals shall be made a preferred cause and shall be expedited in every way. Such a court may affirm or set aside the order of the said commission or may direct it to modify its order. No such order of the said commission shall be modified or set aside by the circuit court of appeals unless it is shown by the board of trade that the order is unsupported by the weight of the evidence or was issued without due notice and a reasonable opportunity having been afforded to such board of trade for a hearing, or infringes the Constitution of the United States, or is beyond the jurisdiction of said commission: *Provided further,* That if the Secretary of Agriculture shall refuse to designate as a contract market any board of trade that has made application therefor, then such board of trade may appeal from such refusal to the commission de-

scribed therein, consisting of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General of the United States, with the right to appeal as provided for in other cases in this section, the decision on such appeal to be final and binding on all parties interested.

(b) If the Secretary of Agriculture has reason to believe that any person is violating any of the provisions of this Act, or is attempting to manipulate the market price of any grain in violation of the provisions of section 5 hereof, or of any of the rules or regulations made pursuant to its requirements, he may serve upon such person a complaint stating his charge in that respect, to which complaint shall be attached or contained therein a notice of hearing, specifying a day and place not less than three days after the service thereof, requiring such person to show cause why an order should not be made directing that all contract markets until further notice of the said commission refuse all trading privileges thereon to such person. Said hearing may be held in Washington, District of Columbia, or elsewhere, before the said commission, or before a referee designated by the Secretary of Agriculture, who shall cause all evidence to be reduced to writing and forthwith transmit the same to the Secretary of Agriculture as chairman of the said commission. That for the purpose of securing effective enforcement of the provisions of this Act the provisions, including penalties, of section 12 of the Interstate Commerce Act, as amended, relating to the attendance and testimony of witnesses, the production of documentary evidence, and the immunity of witnesses, are made applicable to the power, jurisdiction, and authority

of the Secretary of Agriculture, the said commission, or said referee in proceedings under this Act, and to persons subject to its provisions. Upon evidence received the said commission may require all contract markets to refuse such person all trading privileges thereon for such period as may be specified in said order. Notice of such order shall be sent forthwith by registered mail or delivered to the offending person and to the governing boards of said contract markets. After the issuance of the order by the commission, as aforesaid, the person against whom it is issued may obtain a review of such order or such other equitable relief as to the court may seem just by filing in the United States circuit court of appeals of the circuit in which the petitioner is doing business a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission by delivering such copy to its chairman or to any member thereof, and thereupon the commission shall forthwith certify and file in the court a transcript of the record theretofore made, including evidence received. Upon the filing of the transcript the court shall have jurisdiction to affirm, to set aside, or modify the order of the commission, and the findings of the commission as to the facts, if supported by the weight of evidence, shall in like manner be conclusive. In proceedings under paragraphs (a) and (b) the judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 240 of the Judicial Code.

SEC. 7. Any board of trade that has been designated a contract market in the manner herein pro-

vided may have such designation vacated and set aside by giving notice in writing to the Secretary of Agriculture requesting that its designation as a contract market be vacated, which notice shall be served at least ninety days prior to the date named therein as the date when the vacation of designation shall take effect. Upon receipt of such notice the Secretary of Agriculture shall forthwith order the vacation of the designation of such board of trade as a contract market, effective upon the day named in the notice, and shall forthwith send a copy of the notice and his order to all other contract markets. From and after the date upon which the vacation became effective the said board of trade can thereafter be designated again a contract market by making application to the Secretary of Agriculture in the manner herein provided for an original application.

SEC. 8. For the efficient execution of the provisions of this Act, and in order to provide information for the use of Congress, the Secretary of Agriculture may make such investigations as he may deem necessary to ascertain the facts regarding the operations of boards of trade, whether prior or subsequent to the enactment of this Act, and may publish from time to time, in his discretion, the result of such investigation and such statistical information gathered therefrom as he may deem of interest to the public, except data and information which would separately disclose the business transactions of any person and trade secrets or names of customers: *Provided,* That nothing in this section shall be construed to prohibit the Secretary of Agriculture from making or issuing such reports as he may deem necessary relative to the conduct

of any board of trade or of the transactions of any person found guilty of violating the provisions of this Act under the proceedings prescribed in section 6 of this Act: *Provided further,* That the Secretary of Agriculture in any report may include the facts as to any actual transaction. The Secretary of Agriculture, upon his own initiative or in cooperation with existing governmental agencies, shall investigate marketing conditions of grain and grain products and by-products, including supply and demand for these commodities, cost to the consumer, and handling and transportation charges. He shall likewise compile and furnish to producers, consumers, and distributors, by means of regular or special reports, or by such methods as he may deem most effective, information respecting the grain markets, together with information on supply, demand, prices, and other conditions in this and other countries that affect the markets.

SEC. 9. Any person who shall violate the provisions of section 4 of this Act, or who shall fail to evidence any contract mentioned in said section by a record in writing as therein required, or who shall knowingly or carelessly deliver for transmission through the mails or in interstate commerce by telegraph, telephone, wireless, or other means of communication false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of grain in interstate commerce, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, be fined not more than $10,000 or imprisoned for not more than one year, or both, together with the costs of prosecution.

SEC. 10. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

SEC. 11. No fine or imprisonment shall be imposed for any violation of this Act occurring before the first day of the second month following its passage.

SEC. 12. The Secretary of Agriculture may cooperate with any department or agency of the Government, any State, Territory, District, or possession, or department, agency, or political subdivision thereof, or any person; and shall have the power to appoint, remove, and fix the compensation of such officers and employees, not in conflict with existing law, and make such expenditures for rent outside the District of Columbia, printing, telegrams, telephones, law books, books of reference, periodicals, furniture, stationery, office equipment, travel, and other supplies and expenses as shall be necessary to the administration of this Act in the District of Columbia and elsewhere, and there are hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for such purposes.

Approved, September 21, 1922.

U. S. GOVERNMENT PRINTING OFFICE: 1934

IN THE

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 747

HENRY A. WALLACE, SECRETARY OF AGRICULTURE, AND HENRY A. WALLACE, SECRETARY OF AGRICULTURE, HOMER CUMMINGS, ATTORNEY GENERAL, AND DANIEL C. ROPER, SECRETARY OF COMMERCE, SITTING AS A COURT UNDER THE GRAIN FUTURES ACT,

Petitioners,

vs.

ARTHUR W. CUTTEN,

Respondent.

BRIEF AND ARGUMENT OF ARTHUR W. CUTTEN, RESPONDENT, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND APPENDIX.

FRANCIS X. BUSCH,
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JAMES J. MAGNER,
Counsel for Respondent.

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Petitioners,

vs.

ARTHUR W. CUTTEN,

Respondent.

BRIEF AND ARGUMENT OF ARTHUR W. CUTTEN, RESPONDENT, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

MAY IT PLEASE THE COURT:

STATEMENT OF THE CASE.

There are certain circumstances, not referred to in the petition, which the respondent deems essential to a consideration of this petition and answer.

The complaint, (R. 10-25), which was initiated on April 9, 1934, referred only to alleged omissions during the years 1930 and 1931. It was not alleged in the complaint, and the evidence utterly failed to show, that the respondent was

attempting at the time of the filing of the petition to manipulate the market price of grain, or that he was then acting in contravention of the Grain Futures Act of 1922 or any of the rules and regulations made pursuant thereto. Admittedly all of the offenses were past offenses anywhere from 2 to 4 years old.

On May 14, 1934, a hearing was begun at Chicago, Illinois, before a referee designated by the Commission (R. 25). At the outset of the hearing (R. 26), respondent, by his counsel, read and filed a motion to quash the complaint and all proceedings thereunder, on the ground that the proper construction of Section 6 (b) of the Grain Futures Act of 1922 did not authorize the particular complaint and the proceedings, and on the further ground that if said section was to be construed as the Secretary had construed it in the initiation and prosecution of the complaint, then the section was unconstitutional (R. 27, 28, 29, 30). It was agreed that the motion to quash should go with the case to the Commission, and the referee proceeded to take testimony. At the conclusion of the complainant's evidence, the respondent moved (1) to strike complainant's evidence (R. 260), (2) renewed the motion to quash the complaint (R. 271), and (3) moved to dismiss the complaint (R. 272), and, relying on the merits of these motions, offered no evidence. The motions were argued in briefs filed with the Commission and thereafter denied (R. 461).

OPINION BELOW.

For the convenience of the Court, the opinion of the United States Circuit Court of Appeals for the Seventh Circuit (R. 479) is set forth in the Appendix (*infra*, pp. 25 to 30).

The opinion of the said Court is now reported in the Advance Sheets for the Federal Reporter, Second Series. It appears in the publication for the week of February 3, 1936, Vol. 80 (2d)—No. 2, pages 81-272, being printed at page 140 of the Advance Sheets of said date.

STATUTE INVOLVED.

The complete text of the Grain Futures Act of 1922 is set forth in the Appendix (*infra*, pp. 31 to 40).

SUMMARY OF ARGUMENT.

I.

THE CIRCUIT COURT OF APPEALS CORRECTLY CONSTRUED SECTION 6 (b) OF THE GRAIN FUTURES ACT OF 1922.

The statute authorizes only summary proceedings having as their immediate objective, the prompt exclusion of a practice then believed by the Secretary of Agriculture to be currently operating in and affecting, contract markets.

A comparison of the texts of Section 6 (a) and Section 6 (b), respectively, leads to the conclusion that the respective statutory texts were used advisedly.

Attempts to corner grain are punishable under the Anti-Trust Act of 1890. (15 U. S. C. A. sec. 2.)

The speed with which the proceedings shall move forward rests entirely in the discretion of the Commission.

The construction reached by the Circuit Court of Appeals cannot reduce the Act to a nullity, because administrative surveillance of the contract markets is daily, thorough and complete.

The Congress intended that administrative officials should not wait until manipulative practices were beyond treatment.

The legislative history respecting trading in grain futures indicates that the sponsors of the legislation recognized that the primary purpose of Section 6 (b) of the Act was the prevention of presently occurring objectionable practices,—not the punishment of acts long since past and having no relation to existing conditions.

The apparently deliberate choice of expression in the respective texts of Section 6 (a) and Section 6 (b) supports

the construction given to Section 6 (b) by the Circuit Court of Appeals.

Commonwealth v. *Woodring*, 289 Pa. 437, 137 Atl. 635, 639.

II.

PETITIONERS' CONSTRUCTION OF SECTION 6 (b) WOULD BE UNCONSTITUTIONAL.

Statutes are to be construed not only so as to avoid the conclusion that they are unconstitutional, but also so as to avoid grave doubts upon that score.

United States v. *Jin Fuey Moy*, 241 U. S. 394, 401.

Federal Trade Commission v. *American Tobacco Co.*, 264 U. S. 298, 307.

United States v. *Delaware & Hudson Co.*, 213 U. S. 366, 407.

A proceeding brought against individuals who pursue their occupation and calling under no permit, license or designation, seeks the infliction of a penalty.

Petitioners' construction invalidates the section, since it would assume an attempt by the Congress to confer upon a legislative agency, the members of which are procured from the executive branch of the government, the purely judicial power to order the infliction of a penalty for the violation of law.

Wong Wing v. *United States*, 163 U. S. 228.

Such proceedings would be unconstitutional as depriving the accused individual of trial by jury, in violation of the Sixth and Seventh Amendments to the Constitution.

Wong Wing v. *United States*, 163 U. S. 228.

There would be a lack of due process in such proceedings, in that one of the members of the administrative

tribunal would occupy the dual capacity of complainant and judge.

Tumey v. *Ohio*, 273 U. S. 510, 534.

Before the terms "manipulate" and "manipulation" may be used as a statutory basis for the infliction of a penalty, there must be a statutory definition thereof so that accused individuals will not be required to guess at the meaning of the words.

Connally v. *General Construction Co.*, 269 U. S. 385.

ARGUMENT.

I.

THE CIRCUIT COURT OF APPEALS CORRECTLY CONSTRUED SECTION 6 (b) OF THE GRAIN FUTURES ACT OF 1922.

In support of the petition, it is argued that the provisions of Section 6 (b) of the Grain Futures Act of 1922 were intended to authorize the Secretary of Agriculture to institute proceedings seeking an order barring individuals from trading in the contract markets as punishment for past violations of the Grain Futures Act, as well as proceedings seeking to curb alleged violators from the successful culmination of presently threatened or pending attempts to manipulate the market price of grain. In support of petitioners' construction it is said that, unless the Act is so construed, it is reduced to a nullity, and administrative officials rendered powerless to discharge the responsibilities placed upon them by the legislation.

Respondent contends: (1) That the construction of Section 6 (b) of the Grain Futures Act of 1922 reached by the Circuit Court of Appeals is strictly in accordance with the text and purpose thereof; that it is supported by the established canons of construction, and fortified by the history of the legislation; (2) That the construction does not render the Act a nullity, and, having in mind a diligent administration of the Act, provides the Secretary with a process which is prophylactic in character; (3) That petitioners' argument is primarily legislative rather than judicial, in its appeal; (4) That to extend by construction the plain language of the section, is to place an unconstitutional interpretation on the Act.

Petitioners view Section 6 (b) as authorizing the insti-

tution of proceedings purely punitive in character. Respondent contends that the purpose and scope of the legislation is supervisory and remedial, and that it was intended only to provide a method for the exclusion of manipulative practices reasonably thought to be then existing in, or threatening the safety of, contract markets and the market price of grain.

The first Future Trading Act, passed by the 67th Congress on August 24, 1921, which was an attempt to regulate trading in grain futures under the authority of the taxing power, was held unconsfitutional by this Court in *Hill* v *Wallace,* 259 U. S. 44, in an opinion handed down May 15, 1922.

The Grain Futures Act of 1922 was then enacted at the Second Session of the 67th Congress, and approved September 21, 1922. It was upheld by this Court (certain constitutional objections to Section 6 (b) not being considered because not properly before the Court), as within the purview of the Commerce Clause, in the case of *Board of Trade* v. *Olsen,* 262 U. S. 1. The complete text of the Act is printed as an appendix to this brief.

The primary object of the legislation was the correction of evils brought about by the sudden and unreasonable dislocation in the market prices of grain as the consequence of manipulation of prices on the established grain markets of the United States. The method to be employed for effecting the legislative policy was through licensing and designating certain places as contract markets—the meeting-places or markets whereon and through the facilities of which, contracts were made for the future delivery of grain. As the consideration for such official designation as a "contract market" the governing board of the contract market is required to provide for "the prevention of manipulation of prices or

the cornering of any grain by the dealers or operators upon such board'' (Section 5 (d)). The contract markets receive their designation as such from the Secretary of Agriculture, and this designation, license or permit is the *only* permit or designation provided for by the legislative pattern. Individuals who desire to enter into contracts respecting the future delivery of grain and the commission houses who execute the orders, *are not* so licensed.

In a survey of the Act the provisions of Section 6 (a) should first be noted. These provisions refer only to the revocation of the license issued to the contract market. Whenever it is made to appear to a commission composed of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General that a contract market—as for example, the Kansas City Board of Trade—*''has failed or is failing''* to comply with any of the requirements incident to its designation, it may be ordered suspended for a period not to exceed six months, or its designation as such contract market revoked. Such proceeding must be accompanied by the following characteristics:

(a) There must be a notice to the officers of the accused contract market, and a hearing.

(b) The order of suspension or revocation does not become final and effective until 15 days after its issuance.

(c) If, within said fifteen-day period, an appeal be perfected to the Circuit Court of Appeals for the circuit in which is located the principal place of business of the market, the order of the Commission *does not* become effective *until the disposition of the appeal.*

The provisions of Section 6 (b) of the Grain Futures Act of 1922 relate only to individuals and are in marked con-

trast to those of Section 6 (a), both in language and in objective.

First, the Secretary of Agriculture must have *reason to believe* that the accused person *"is violating"* some of the provisions of the Act, *"or is attempting to manipulate"* the market price of grain in violation of the provisions of Section 5 of the Act. It is not for a failure to have filed reports, or, for having filed inaccurate reports, apart from an attempt to manipulate, that such proceedings are to be initiated. *Current attempts at manipulation are the proscribed activities.*

Second, upon the issuance of a complaint conforming to the statute, a hearing may be held after *three days'* notice.

Third, the hearing may be held by the Commission, at Washington, D. C., or by a referee designated by the Commission.

Fourth, the burden of removing the implication of manipulative practices is placed upon the individual.

Fifth, in the event of an order excluding the offender from contract markets, and an appeal from such order by the accused individual, there is no statutory supersedeas, as in the case of Section 6 (a); whether or not such order of the Commission shall be stayed during appeal, rests entirely in the discretion of the Circuit Court of Appeals, and turns on the merits of the accused person's application therefor.

The penalty provisions of the Grain Futures Act are to be found in Section 9 thereof. Under the provisions of that section, if any person shall violate Section 4 of the Act (making contracts of sale of grain for future delivery, except on contract markets, and within the exceptions to the Act), or shall fail to evidence any contract of sale by a record in writing, or shall knowingly or carelessly deliver through the mails or interstate commerce false or mislead-

ing information concerning crop or market conditions, such person shall be deemed guilty of a misdemeanor and shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than one year, or both.

Section 9 does not declare a punishment for manipulation or attempted manipulation, and, we submit, for the very excellent reason that a punishment was already provided for such an offense in the then existing statutes. Section 2 of the Anti-Trust Act of 1890 (15 U. S. C. A. Section 2) provides that: "Every person who shall monopolize or attempt to monopolize or conspire to monopolize any part of the trade or commerce of the several states" shall be guilty of a misdemeanor punishable by fine or imprisonment, or both. This was the law upon which the prosecution was based in *United States* v. *Patten*, 226 U. S. 525, in which the complaint charged a conspiracy to corner the cotton market.

Thus, from all of these sections, is the legislative pattern of regulation to be gathered. *First*, the Secretary may proceed against *the contract market* and revoke its designation as such whenever it appears that it "*has* failed or is failing" to enforce rules and regulations designed to prevent manipulation or has not enforced such rules and regulations. *Second*, if the Secretary has reason to believe that *any individual* "*is* violating" any of the provisions of the Act, or "*is* attempting to manipulate" the market price of grain, he may proceed in a summary manner to frustrate and prevent the successful consummation of the violation or of the manipulation. *Finally*, if the violation happens to be one covered by the provisions of Section 9 of the Act, the Secretary may, (1) if the practice is being employed at the time, and in order to prevent the successful culmination of the current violations, close the contract market to the offender (under Section 6 (b)), and (2) cause

the institution of criminal proceedings in respect of past violations already consummated, under Section 9, or the provisions of the Sherman anti-trust law.

The manifest intent and purpose of the Congress was to provide the Secretary, under the provisions of Section 6 (b) of the Act, with a summary process, whereby, acting upon an existing abuse as such, as distinguished from seeking to punish the individual, the Secretary would be enabled to clear the offending practice from the contract markets *at the time* of the alleged manipulations. By this method the successful consummation of a then current manipulation is to be frustrated and prevented. While not in so many words the familiar "cease and desist" order to be found in the legislation authorizing the Federal Trade Commission, (15 U. S. C. A. Sec. 45) it resembles such order, has a similar objective and in actual operation could be as effectively used. The statutory basis upon which rests the authority for the initiation of the complaint, and the issuance of process, is the Secretary's belief that the accused individual *is then violating* the Act or *is then attempting* to manipulate the market price of grain. The Congress intended that under such circumstances, and entertaining such belief, the Secretary of Agriculture should not wait until the abuse was beyond correction. The administrative action is to be immediate and direct.

The language of the section is so plain as to leave no room for construction. The use of the phrase "is violating and is attempting to manipulate the market price of grain"; the provision for a hearing upon three days' notice; the failure to provide for a right to a statutory supersedeas; the transfer of the burden of proof from the Secretary to the accused, all indicate that the proceedings contemplated by the enactment were to operate upon what the Secretary then believed to be an existing and prevalent condition.

The character of the violation should be such as to give rise to a reasonable belief in a continuation of the manipulative practice, unless it be *then cleared* from the contract market. In its general outlines, the proceeding is comparable to the summary abatement of a nuisance. Respondent does not concede the section to be constitutional, even under this construction of the statute, but that precise question does not arise upon the record of this particular case. That can only be presented to and determined by the Courts, when the Secretary proceeds against an accused individual in strict compliance with the text of the section.

Petitioners contend that a literal adherence to the words of the statute would rob the Act of vitality. It is submitted that in advancing this contention, the petitioners place a too literal interpretation upon the section and fail to perceive that it is a current practice—not an isolated offense—which is to be corrected by Section 6 (b). In each case the inquiry is one of fact. The ultimate question is whether the evidence will justify a conclusion that the accused individual is violating the Act, or is attempting to manipulate the market price of grain. Obviously no certain test can be applied, and each case must turn upon its own set of facts. In the case at bar, the Circuit Court of Appeals very properly held that the words of the statute cannot be stretched to include violations completed more than two years before the complaint was filed.

It is said in the petition that the time to be consumed by the proceedings is contrary to a summary objective, and petitioners point to the time consumed in this proceeding by the Commission, and by the Circuit Court of Appeals. What the petition does not make clear, is that the Secretary and the Commission are at liberty to act as promptly as they desire. In this case the actual hearing, including short sessions, occupied but ten days, and the evidence was

unusually voluminous. The Commission may make its own rules of procedure. It may, subject only to the elementary requirements of fair dealing, absolutely control the amount of time to be consumed by the procedure.

Neither the practical operation of the statute, nor the correctness of the construction reached by the Circuit Court of Appeals can be fairly judged without some knowledge of the administrative methods inaugurated for the operation of the statute.

There has been established an administrative agency known as the Grain Futures Administration. Mr. L. A. Fitz (R. 129) is the Administration's Grain Exchange Supervisor, in Chicago, where he has an office with a clerical force. His work consists primarily in receiving reports of transactions upon the Chicago Board of Trade, Chicago Open Board of Trade, Milwaukee Grain and Stock Exchange, and St. Louis Merchants Exchange (R. 138). His office also makes a permanent record of price quotations, checks market gossip, and examines the books and records of commission houses whenever and wherever necessary (a right sustained by the Circuit Court of Appeals for the Seventh Circuit in *Bartlett-Frazier Co.* v. *Hyde*, 65 Fed. (2d) 350, Cert. Den. 290 U. S. 654), in order to verify reports or check matters connected with grain transactions (R. 138). Under the regulations (R. 434, 437, 438) not only are daily reports required from those individuals whose transactions exceed a stated figure (which is varied from time to time), but similar reports are required from those commission houses who execute the transaction for, and carry the accounts of, the individual trader. In this manner the executive officials of the Grain Futures Administration are furnished daily with secret and informative statistics that serve as a basis for the surveillance of the contract market, and disclose the volume of trading in the

market and the character of the individual trading. Ordinarily it is also the practice of the supervisor to report current matters of importance to the Business Conduct Committee of the Board of Trade for correction or discipline (R. 141).

The Circuit Court of Appeals properly declined to place a construction on Section 6 (b) which would permit administrative officials to wait until practices thought to be manipulative had long since been completed, and had entirely ceased to have any possible effect upon, the current prices of grain. The construction placed upon the Act by the Circuit Court of Appeals raises the functions of the Commission above the level of a police court, and it will not require three members of the cabinet to examine complaints and evidence against accused individuals, ranging in seriousness from mere failure to file reports, to the charge of manipulative practices, long after the opportunity for corrective procedure has passed.

As an attempted justification for the construction adopted by the petitioners it is said that in the instant case the administrative officials required two years in order to discover the magnitude and seriousness of the respondent's market operations. The respondent has throughout this litigation vigorously denied that his transactions were of any consequence whatsoever, but petitioners' assertion is refuted by the record. (R. 151, 153, 173.) It appears affirmatively from the testimony that the respondent's omission to file reports in 1930 was known to and excused by the Chicago supervisor at that time. When reports were asked from the respondent in March of 1932 the Chicago supervisor did not ask for reports back of the date of November 30, 1931. (R. 445-446.) The construction sought by the petitioners is asserted primarily to excuse their failure to take, at the time of the

alleged omissions, the steps contemplated by the legislation.

Our contention of a reasonable construction to be given to Section 6 (b) is: suppose that Smith is attempting to manipulate upward the market price of July wheat; that is, wheat which is to be delivered and paid for on the last day of July, 1936. By reports, either from that individual, or from the commission houses, or from the volume of trading in that particular future, or from an examination of the books of the commission houses, the Exchange supervisor has reason to suspect Smith. Under Section 6 (b) the Secretary of Agriculture, being advised of the circumstances and then entertaining the belief that Smith is attempting to manipulate the market price of grain, may issue his complaint and set it down for an immediate hearing. The objective of the Secretary under that hypothesis is not the *punishment* of Smith for misconduct, but administrative action on his part designed to clear the market of the manipulative tendency and protect the market price of grain. If Smith fails to satisfy the Commission that he was not then attempting to manipulate the price of grain, the Commission may enter an order directing the contract markets to refuse him further trading privileges. That order would be for such period of time as would be reasonably necessary to remove the offending trades from the market or protect other traders and holders of grain, and would logically expire on July 31st, the delivery date for the July future. A spread of the manipulative practice and the successful consummation of the manipulative scheme is thus prevented. A critical situation is treated at the time of the crisis by prompt administrative action and not after all opportunity to serve the public good has passed. This, the respondent submits, is the obvious purpose and scope and a logical, common-sense interpretation

of the actual language used in Section 6 (b) in the Grain Futures Act of 1922.

In respect of the legislative history of the enactment, it will be observed that both Sections 6 (a) and 6 (b) were part of the Future Trading Act held unconstitutional by this Court in the case of *Hill* v. *Wallace,* 259 U. S. 44.

When (after the decision in the case of *Hill* v. *Wallace*) the Grain Futures Act was rewritten and the legislation introduced in the House, hearings were held by the House Committee on Agriculture and Forestry. Representative J. N. Tincher, of Kansas, had been the sponsor of future trading legislation in the House of Representatives, and Senator Arthur Capper, of Kansas, was the sponsor in the Senate. Both of these men were active leaders in the advancement of the legislation in the respective houses. That Representative Tincher had a well-defined notion of the purpose of the Act is clear from the reported hearings on the Grain Futures Act before the Committee on Agriculture, House of Representatives, 67th Congress, Second Session. In discussing the provisions of the Grain Futures Act with one of the witnesses who had appeared before the Committee, after that witness had pointed out to the Committee that in spite of the fact that the avowed purpose of the legislation was to prevent manipulation, no penalty was provided therefor, Mr. Tincher said (Committee on Agriculture, House of Representatives, 67th Congress, 2nd Session, June 7, 8, 9, 12, 1922, Hearings on Grain Futures Act, page 35):

> "Mr. Tincher: You suggested a while ago that this bill does not provide a penalty, that it does not provide a punishment for manipulating the market. You are entirely right about that, because we have a law now that does that. The object of this bill was not to punish some man that manipulated the market but to prevent manipulation."

A study of the legislative history of both the Future Trading Act and the Grain Futures Act of 1922 leads inevitably to the conclusion that Congress selected the language used in Sections 6 (a) and 6 (b) deliberately to express in the first section a method of dealing with contract markets for *both present and past* offenses, and in the second section a method of dealing with individuals for the summary prevention of *presently existing* manipulative practices.

The petitioners have cited the cases of *Church of the Holy Trinity* v. *United States,* 143 U. S. 457; *United States* v. *Kirby,* 7 Wall. 482; *Reiche* v. *Smythe,* 13 Wall. 162; *Silver* v. *Ladd,* 7 Wall. 219; *United States* v. *Lacher,* 134 U. S. 624; *United States* v. *Katz,* 271 U. S. 354; and *Sorrells* v. *United States,* 287 U. S. 435.

These authorities stand for one general proposition of undoubted correctness, namely, that all laws should receive a sensible construction. In some of the foregoing cases the proper construction of the penal statutes required a holding that the accused individuals were not within either the spirit or the intent of the legislation; in others, it was held that it would defeat the obvious intention of the enactment to hold that the accused individuals were not within the intent of the statute. The cited authorities represent sound dispositions of the particular situations arising under the particular statutes there involved, but not one of the cases is in point as related to the facts in the case at bar. In none of the cases cited was the language of penal statutes unnecessarily extended by construction.

Petitioners also cite the cases of *Huidekoper's Lessee* v. *Douglass,* 3 Cranch. 1; *Rutherford* v. *Greene's Heirs,* 2 Wheat. 196; *Hayden* v. *Ortkeiss,* 83 Ky. 396; *Maysville & Lexington R. R. Co.* v. *Herrick,* 76 Ky. 122; *Malloy* v. *Chicago & North Western Ry. Co.,* 109 Wis. 29, 85 N. W. 130.

These authorities represent situations wherein the legislature sought to assist individuals, or afford a remedy for some distressing situation. The statutes in those cases were remedial, not penal. As such they were liberally construed. The construction of Section 6 (b), which petitioners contend for, makes it a penal statute. As a penal statute it is subject to a strict construction.

The appropriate rule of construction to be employed in the case at bar is stated in the case of *Commonwealth* v. *Woodring*, 289 Pa. 437, 137 Atl. 635, at page 639. In that case the Pennsylvania court said:

> "This conclusion is buttressed by another rule of contruction, viz., that where, in an agreement, will, or statute there is a change in the method of expression, the presumption, usually of great force, is that the intention was to give to the later words a different meaning from those formerly used. Hence, when the Legislature said in the act of 1925 that certain things 'shall' be done and, later, that certain others 'may' be done, the presumption is that it meant just what it said, else why did it not continue the use of 'shall'?"

So in the instant case, the antithetical expressions in Section 6 (a) and Section 6 (b) require that the two sections be given differing constructions. "Has failed or is failing" in Section 6 (a) means *both past and present* failures. "Is violating or is attempting to manipulate" in Section 6 (b) relates *only* to *presently existing* violations or attempts to manipulate.

Furthermore, where such power is not clearly and unambiguously stated in the words of a statute nor to be fairly inferred from the language employed, statutes are not to be so construed as to create the power to impose and inflict penalties.

A workable scheme of regulation is feasible under the particular statute under scrutiny. If, however, the petitioners deem it necessary to the appropriate administra-

tion of the Act that the Grain Futures Act of 1922 should be broadened, then the remedy, as stated by the Circuit Court of Appeals, rests with the Congress—not the courts.

II.

PETITIONERS' CONSTRUCTION OF SECTION 6 (b) WOULD BE UNCONSTITUTIONAL.

Petitioners would not deny the validity of the respondent's construction of Section 6 (b). They seek, however, by the process of construction, to carry the legislative scope and purpose of the Act beyond the plain and obvious meaning of its language and construe it as authorizing a purely punitive proceeding brought only and solely to punish the offender for some alleged ancient misconduct. It is the respondent's contention that when, under such a construction, a proceeding is brought against an individual trader, who has been pursuing his occupation and business without the requirement of any license, permit or designation of any kind, the obvious end and purpose of the proceeding is the punishment of the accused individual. The proceeding contemplates depriving the individual of his right to pursue his business or occupation for a period of time fixed solely by the Commission. Although civil in form, the objective is essentially penal. The determination of the guilt of the individual is merely the prelude to the exaction of a punitive penalty. No jury is or can be provided. The complainant occupies the position of prosecutor, as well as judge.

Such interpretation, indulged in by the Commission (R. 451-466) and advanced by petitioners in their application for the writ, *assumes* that the Congress of 1922 intended to authorize an administrative agency to find the fact of guilt and exact a penalty from accused individuals for alleged misconduct. This, the respondent submits,

is an obviously unconstitutional interpretation. Until there is specific authority therefor in the text of the section it is not to be assumed that Congress intended to deprive accused individuals of the safeguards set up by the constitution. Petitioner's construction would invalidate the section entirely because: (1) It would involve an attempt by the Congress to confer upon a legislative agency, the members of which are procured from the executive branch of the government, the purely judicial power to order the infliction of a penalty for the violation of law; (2) The accused individual would be denied a trial by jury in violation of the Sixth and Seventh Amendments to the Constitution; (3) There would be a lack of due process, in that one of the members of the administrative tribunal would occupy the dual capacity of complainant and judge; (4) There would be a further lack of due process since the statute is without a statutory definition for the terms "manipulate" and "manipulation".

This argument respecting unconstitutionality is not leveled at the section, as it is written, but as it is interpreted and sought to be enforced by the Secretary and the Commission.

It is well settled by the decisions of this Court that, if a statute be reasonably susceptible of two interpretations, by one of which it is unconstitutional, and by another valid, that construction which will save the statute will be adopted. *United States* v. *Delaware & Hudson Co.*, 213 U. S. 366, 407.

Not only is it true that a statute will be construed so as to avoid the conclusion that it is unconstitutional, but it will also be construed so as to avoid grave doubts upon that score. *United States* v. *Jin Fuey Moy*, 241 U. S. 394, 401; *Federal Trade Commission* v. *American Tobacco Co.*, 264 U. S. 298, 307.

This Court held, in *Wong Wing* v. *United States*, 163

U. S. 228, that executive officials could not be constitutionally authorized to inflict a punishment upon aliens found to be illegally within the borders of the United States, although the detection, identification and expulsion of such aliens were already part of the statutory duties of such executive officials; that such punishment could only be inflicted after a trial by jury and in proceedings consonant with the Constitution and its amendments. While in that case punishment for what had been declared to be an infamous crime was involved, the principle there laid down, which prevented the power to punish in the public interest from being exercised at the hands of administrative officials, disposes of the construction contended for by the petitioners in the instant case.

Tumey v. *Ohio,* 273 U. S. 510, is cited as authority for our contention that petitioners' construction offends against the requirement of due process, in that one of the members of the Commission occupies the dual capacity of prosecutor and judge. There this Court held that the mayor of a village was disqualified from acting as judge in the case of accused individuals brought before him, not only because his only prospect of emolument arose through the conviction of the defendant, but also because of his official interest in the outcome of the trial. It was said at page 534, that:

> "A situation in which an official perforce occupies two practically and seriously inconsistent positions, one partisan and the other judicial, necessarily involves a lack of due process of law in the trial of defendants charged with crimes before him."

In the case of *Connally* v. *General Construction Co.,* 269 U. S. 385, at page 391, this Court held that the terms of a penal statute creating an offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties; that

a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must guess at its meaning violates the essentials of due process of law. We submit that such vague and unlimited words as "manipulate" and "manipulation" fall within the above category. The statute here provides no definition of manipulation. With the phrase undefined, it is subject to changes in interpretation by each successive Commission. Such indefiniteness has no place in a penal statute.

The construction of Section 6 (b), adopted by the Circuit Court of Appeals, which limits the authority of the Secretary to the exclusion of offending practices from the contract markets, avoids the unconstitutional interpretation of the section which is requested by petitioners, and leaves any question respecting the constitutionality of the particular *procedure* under the statute, to be determined as the particular situation arises.

CONCLUSION.

It is respectfully submitted that the Circuit Court of Appeals properly declined to extend the provisions of Section 6 (b) beyond the purpose expressed by the text of the enactment. To have adopted the petitioners' construction would have been to place an unconstitutional interpretation upon the section. The petition for the writ of certiorari should be denied.

Respectfully submitted,

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Counsel for Arthur W. Cutten, Respondent.

231 South La Salle Street,
Chicago, Illinois,
February, 1936.

APPENDIX.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 5467. October Term, 1935, October Session, 1935.

ARTHUR W. CUTTEN, *Petitioner,*

vs.

HENRY A. WALLACE, Secretary of Agriculture, and HENRY A. WALLACE, Secretary of Agriculture, HOMER CUMMINGS, Attorney General, and DANIEL C. ROPER, Secretary of Commerce, Sitting as a Commission Under The Grain Futures Act, *Respondents.*

Petition for Review of Order of Commission Under the Grain Futures Act.

November 25, 1935.

Before EVANS and SPARKS, *Circuit Judges,* and BALTZELL, *District Judge.*

EVANS, *Circuit Judge.* This is a petition for review of the order of the commission (created under the Grain Futures Act) which directed that all contract markets refuse all trading privileges thereon to Arthur W. Cutten of Chicago for a period of two years from March 1, 1935.

Formal complaint against Cutten had been made April 9, 1934, wherein he was charged with various violations of the Act enacted September 21, 1922, commonly known as the Grain Futures Act. A hearing was had before a commission consisting of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General. Upon the testimony taken, the commission made findings of fact from which we quote the following:

"1. The Chicago Board of Trade was duly designated as a contract market under the Grain Futures Act on May 3, 1923, and it has been a contract market continuously since that date.

"2. During the years 1930 and 1931 respondent was, and now is, a member of the Chicago Board of Trade.

"3. From and after October 31, 1927, through and including the year 1931, members of contract markets were required by regulations made pursuant to the Grain Futures Act to report to the Grain Futures Administration their net position in futures owned or controlled by them, long or short, by grain and by future, when they had net open commitments in any one future equal to or in excess of 500,000 bushels of wheat, corn or oats, and 200,000 bushels of rye or barley.

"4. Respondent in 1930 and 1931 had knowledge of the reporting requirements.

"5. Respondent, in 1930 and 1931, transacted his business through eight commission firms. He split his trade into 35 accounts. He carried some of his accounts in the names of relatives and associates. Respondent owned or controlled each of the 35 accounts.

"6. During the year 1930, respondent did not make any reports to the Grain Futures Administration.

"7. On approximately 130 days during 1930, respondent had open commitments in a single wheat future in accounts owned and controlled by him equal to or in excess of 500,000 bushels.

"8. On approximately 119 days during 1930, respondent had trades in a single wheat future in accounts owned and controlled by him in which he had open commitments equal to or in excess of 500,000 bushels.

"9. During the year 1931, respondent made reports irregularly to the Grain Futures Administration, none of which was true or correct as a statement of his net position on the market on the day covered by such report.

"10. During the year 1931, there were a great many days on which respondent made no reports at all, although having on such days open commitments in a single wheat future, in accounts owned and controlled by him, equal to or in excess of 500,000 bushels.

"11. On approximately 110 days during 1931, respondent had trades in a single wheat future in accounts owned and controlled by him, in which he had open commitments equal to or in excess of 500,000 bushels.

"12. On many days during the years 1930 and 1931, the respondent, in accounts definitely identified as belonging

to him, had open commitments and trades which he failed to report as required by the Act and regulations made pursuant thereto.

"13. During the year 1931, the respondent made false reports of his open commitments and transactions in accounts definitely identified as his and indisputably belonging to him contrary to the act and regulations made pursuant thereto.

"14. Respondent's purpose in concealing his position in the market was to manipulate the price of grain and thereby to make large profits. He systematically allocated purchases and sales of wheat futures to the various accounts in order to keep them under 500,000 bushels, and thus to avoid detection. He attempted to manipulate the price of grain."

The commission also made conclusions wherein it found that Cutten's conduct constituted a violation of the Grain Futures Act and the rules and regulations made pursuant thereto, and that an order should be entered that all contract markets refuse all trading privileges to him for a period of two years. The order, which is here assailed, was thereupon entered.

The Grain Futures Act has been upheld and construed in the following decisions: *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1; *Board of Trade of Chicago* v. *Wallace*. 67 F. (2d) 402; and *Bartlett Frazier Co.* v. *Hyde*, 65 F. (2d) 350.

The commission filed an opinion which dealt at length with the various questions raised by petitioner, which we will consider under two headings: (a) The sufficiency of the evidence to support the findings. (b) The sufficiency of the findings to support the order.

(a) Petitioner asserts that the evidence does not support the findings of the commissioners. With this contention we cannot agree. It would serve no useful purpose to set forth the testimony upon which this conclusion is predicated. It is sufficient to say that the evidence amply supports the findings. It points persuasively to the conclusion that Cutten repeatedly, knowingly, and intentionally, during the deep depression years of 1930 and 1931, when agriculture was waging its losing battle for existence on account of low and ever lower prices, violated and flouted that provision of the rules and regulations promulgated pursuant to the authority of the statute which required him

as a dealer to report the fact that he was short more than 500,000 bushels in any one future.

(b) Whether the findings support the order depends upon the construction which we are required to give to section 6 (b) of the Act. The pertinent statutes read as follows:

"SEC. 5. The Secretary of Agriculture is hereby authorized and directed to designate any board of trade as a 'contract market' when, and only when, such board of trade complies with and carries out the following conditions and requirements: * * *.

"SEC. 6. Any board of trade desiring to be designated a 'contract market' shall make application to the Secretary of Agriculture for such designation and accompany the same with a showing that it complies with the above conditions, and with a sufficient assurance that it will continue to comply with the above requirements.

"(a) A commission composed of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General is authorized to suspend for a period not to exceed six months or to revoke the designation of any board of trade as a 'contract market' upon a showing that such board of trade *has failed or is failing* to comply with any of the above requirements or is not enforcing its rules of government made a condition of its designation as set forth in section 5. * * *

"(b) If the Secretary of Agriculture has reason to believe that any person *is violating* any of the provisions of this Act, or *is attempting to manipulate* the market price of any grain in violation of the provisions of section 5 hereof, or of any of the rules or regulations made pursuant to its requirements, he may serve upon such person a complaint stating his charge in that respect, * * *. Upon evidence received the said commission may require all contract markets to refuse such person all trading privileges thereon for such period as may be specified in said order. * * *"

Petitioner argues that the power to suspend a trader must be found in section 6(b), and an examination of said section makes it imperative that the trader accused of the wrongdoing condemned by the Act be one who "*is* violating any of the provisions of this Act, or *is attempting to manipulate* the market price of any grain." In other words,

petitioner contends that any violation of the Grain Futures Act of which he *was* shown to have been guilty *was committed* some two years *prior* to the institution of these proceedings, and consequently he is not within the purview of said section 6.

The determination of the appeal, therefore, turns upon the use of the words "is violating" and "is attempting to manipulate" in said section.

Respondents argue that although the statute uses the present tense, it should be so construed as to include past transactions. A rather strong and persuasive argument is made in favor of the wisdom of such a construction, without which the power to deal with an offender is almost nil. We are, however, required to construe the statute, not to pass upon its purposes, but upon its wording.

Support for limiting the construction of the words so as to exclude instances where the violation has occurred may be found in section 6 (a). There, referring to the failure of the board of trade to comply with the requirements of the Act, we find the words "has failed or is failing" to comply with "any of the above requirements." What effect then must we give to the language of 6 (b) where the words "has failed" are omitted?

It is admittedly rather difficult to understand why Congress would, when dealing with the punishment of a Board, include past as well as present violations, whereas in section 6 (b) when dealing with the punishment of the individual trader, it provides for punishment only when such person "is violating" or "is attempting to manipulate the market."

Respondents' counsel, in addition to supporting their argument that the Act, to effectually accomplish its purpose, should be made to cover past offenses as well as existing violations of the Act, call our attention to the following decisions: *Church of the Holy Trinity* v. *United States*, 143 U. S. 457; *United States* v. *Lacher*, 134 U. S. 624; *The Sterling*, 65 F. (2d) 439; *Silver* v. *Ladd*, 7 Wall. 219; *United States* v. *Kirby*, 7 Wall. 482; *Reiche* v. *Smythe*, 13 Wall. 162; *United States* v. *Katz*, 271 U. S. 354; *Sorrells* v. *United States*, 287 U. S. 435; *Helvering* v. *Stockholms Enskilda Bank*, 293 U. S. 84; *Huidekoper's Lessee* v. *Douglass*, 3 Cranch 1; *Hayden* v. *Ortkeiss*, 83 Ky. 396; *Louisville Southern Railroad Company's Receivers* v. *Lewis*, 101 Ky. 296; *Malloy* v. *Chicago & N. W. Ry.*, 109 Wis. 29; *Rutherford* v.

Greene's Heirs, 2 Wheat. 196; *Maysville & Lexington R. R. Co.* v. *Herrick,* 76 Ky. 122. These decisions are to the effect that a court is justified in departing from the plain language of the statute in order to give it a fair and practical meaning. Among the cases cited are some where the tense of the verb used in the statute is changed.

We are not, however, persuaded that the words of the statute here used can or should be so stretched as to include past violations which were committed and completed two years before the complaint was filed.[1]

We can not ignore the fact that Congress in dealing with contract markets provided for cancellation of rights if violations of regulations *had* occurred whereas in the next section the right to cancel a member's privilege on a contract market was limited to instances where the member *is* violating a regulation. While respondents' counsel has ably argued that the Commission should have the power to suspend for past transgressions and without such authority the section is sterile—yet he has not met the stubborn and inescapable fact that Congress has spoken in two successive sections. In one it expressly included past as well as present violations and in the next section specified only existing violations as ground of suspension. To extend the latter section to the breadth of the former would be usurping the function of Congress.

Under such conditions it is for Congress to amend its legislation, if it deems it wise and desirable so to do, not for courts to do so by judicial construction.

The order is

REVERSED.

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[1] Where there is no ambiguity in words of statute there is no room for statutory construction. *U. S.* v. *Mo. Pac. Ry. Co.,* 278 U. S. 269; *Helvering* v. *N. Y. Trust Co.,* 292 U. S. 455; *Mich.* v. *Mich. Trust Co.,* 286 U. S. 334; *Yorke* v. *U. S.,* 173 U. S. 439; *Texas* v. *Chiles,* 21 Wall. 488; *U. S.* v. *Wiltberger,* 5 Wheat. 76; *Boudinot* v. *U. S.,* 11 Wall. 616; *U. S.* v. *Union Pac. R. Co.,* 91 U. S. 72; *Lewis* v. *U. S.,* 92 U. S. 618; *Doe* v. *Considene,* 6 Wall. 458; *U. S.* v. *Ewing,* 184 U. S. 140; *Amer. Exp. Co.* v. *U. S.,* 212 U. S. 522; *Caminetti* v. *U. S.,* 242 U. S. 470; *U. S.* v. *Hill,* 248 U. S. 420; *U. S.* v. *Standard Brewery Co.,* 251 U. S. 210; *Commissioner* v. *Gottlieb,* 265 U. S. 310; *St. Paul, M. & M. R. Co.* v. *Phelps,* 137 U. S. 528; *Cox* v. *Lott,* 12 Wall. 204; *Russell Motor Co.* v. *U. S.,* 261 U. S. 514; *Duke Power Co.* v. *Commissioner,* 44 F. (2d) 543; *Braffith* v. *People,* 26 F. (2d) 646; *Riverdale Co-op. Assn.* v. *Commissioner,* 48 F. (2d) 711; *So. Carolina Produce Assn.* v. *Commissioner,* 50 F. (2d) 742; *Town of Clayton* v. *Col. & So. Ry. Co.,* 51 F. (2d) 977; *Darby-Lynde Co.* v. *Alexander,* 51 F. (2d) 56; *In re Boggs-Rice Co.,* 66 F. (2d) 855; *McCaughn* v. *Amer. Meter Co.,* 67 F. (2d) 148; *United Electric Coal Co.* v. *Rice, et al.,* decided by this court October 26, 1935.

The Grain Futures Act of September 21, 1922 (U. S. C. Title 7), provides as follows:

An Act For the prevention and removal of obstructions and burdens upon interstate commerce in grain, by regulating transactions on grain future exchanges, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, This Act shall be known by the short title of "The Grain Futures Act."

SEC. 2. (a) For the purposes of this Act "contract of sale" shall be held to include sales, agreements of sale, and agreements to sell. The word "person" shall be construed to import the plural or singular, and shall include individuals, associations, partnerships, corporations, and trusts. The word "grain" shall be construed to mean wheat, corn, oats, barley, rye, flax, and sorghum. The term "future delivery," as used herein, shall not include any sale of cash grain for deferred shipment or delivery. The words "board of trade" shall be held to include and mean any exchange or association, whether incorporated or unincorporated, of persons who shall be engaged in the business of buying or selling grain or receiving the same for sale on consignment. The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person. The words "interstate commerce" shall be construed to mean commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof, or within any Territory or possession, or the District of Columbia.

(b) For the purposes of this Act (but not in any wise limiting the foregoing definition of interstate commerce) a transaction in respect to any article shall be considered to be in interstate commerce if such article is part of that current of commerce usual in the grain

trade whereby grain and grain products and by-products thereof are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State, or for manufacture within the State and the shipment outside of the State of the products resulting from such manufacture. Articles normally in such current of commerce shall not be considered out of such commerce through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act. For the purpose of this paragraph the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nation.

SEC. 3. Transactions in grain involving the sale thereof for future delivery as commonly conducted on boards of trade and known as "futures" are affected with a national public interest; that such transactions are carried on in large volume by the public generally and by persons engaged in the business of buying and selling grain and the products and by-products thereof in interstate commerce; that the prices involved in such transactions are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining the prices to the producer and the consumer of grain and the products and by-products thereof and to facilitate the movements thereof in interstate commerce; that such transactions are utilized by shippers, dealers, millers, and others engaged in handling grain and the products and by-products thereof in interstate commerce as a means of hedging themselves against possible loss through fluctuations in price; that the transactions and prices of grain on such board of trade are susceptible to speculation, manipulation, and control, and sudden or unreasonable fluctuations in the prices thereof frequently occur as a result of such speculation, manipulation, or control, which are detrimental to the producer or the consumer and the persons handling grain and products and by-products thereof in interstate commerce, and that such fluctuations in prices are an obstruction to and a burden upon interstate commerce in grain and the products and by-products thereof and

render regulation imperative for the protection of such commerce and the national public interest therein.

SEC. 4. It shall be unlawful for any person to deliver for transmission through the mails or in interstate commerce by telegraph, telephone, wireless, or other means of communication any offer to make or execute, or any confirmation of the execution of, or any quotation or report of the price of, any contract of sale of grain for future delivery on or subject to the rules of any board of trade in the United States, or for any person to make or execute such contract of sale, which is or may be used for (a) hedging any transaction in interstate commerce in grain or the products or by-products thereof, or (b) determining the price basis of any such transaction in interstate commerce, or (c) delivering grain sold, shipped, or received in interstate commerce for the fulfillment thereof, except—

(a) where the seller is at the time of the making of such contract the owner of the actual physical property covered thereby, or is the grower thereof, or in case either party to the contract is the owner or renter of land on which the same is to be grown, or is an association of such owners, or growers of grain, or of such owners or renters of land; or

(b) Where such contract is made by or through a member of a board of trade which has been designated by the Secretary of Agriculture as a "contract market," as hereinafter provided, and if such contract is evidenced by a record in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery: *Provided,* That each board member shall keep such record for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct, which record shall at all times be open to the inspection of any representative of the United States Department of Agriculture or the United States Department of Justice.

SEC. 5. The Secretary of Agriculture is hereby authorized and directed to designate any board of trade as a "contract market" when, and only when, such board of trade complies with and carries out the following conditions and requirements:

(a) When located at a terminal market where cash grain of the kind specified in the contracts of sale of

grain for future delivery to be executed on such board is sold in sufficient volumes and under such conditions as fairly to reflect the general value of the grain and the differences in value between the various grades of such grain, and where there is available to such board of trade official inspection service approved by the Secretary of Agriculture for the purpose.

(b) When the governing board thereof provides for the making and filing by the board or any member thereof, as the Secretary of Agriculture may direct, of reports in accordance with the rules and regulations, and in such manner and form and at such times as may be prescribed by the Secretary of Agriculture, showing the details and terms of all transactions entered into by the board, or the members thereof, either in cash transactions consummated at, on, or in a board of trade, or transactions for future delivery, and when such governing board provides, in accordance with such rules and regulations, for the keeping of a record by the board or the members of the board of trade, as the Secretary of Agriculture may direct, showing the details and terms of all cash and future transactions entered into by them, consummated at, on, or in a board of trade, such record to be in permanent form, showing the parties to all such transactions, including the persons for whom made, any assignments or transfers thereof, with the parties thereto, and the manner in which said transactions are fulfilled, discharged, or terminated. Such record shall be required to be kept for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct, and shall at all times be open to the inspection of any representative of the United States Department of Agriculture or United States Department of Justice.

(c) When the governing board thereof provides for the prevention of dissemination by the board or any member thereof, of false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of grain in interstate commerce.

(d) When the governing board thereof provides for the prevention of manipulation of prices or the cornering of any grain by the dealers or operators upon such board.

(e) When the governing board thereof does not exclude from membership in, and all privileges on, such board of trade, any duly authorized representative of any lawfully formed and conducted cooperative association of producers having adequate financial responsibility which is engaged in cash grain business, if such association has complied, and agrees to comply, with such terms and conditions as are or may be imposed lawfully on other members of such board: *Provided,* That no rule of a contract market shall forbid or be construed to forbid the return on a patronage basis by such cooperative association to its bona fide members of moneys collected in excess of the expense of conducting the business of such association.

(f) When the governing board provides for making effective the final orders or decisions entered pursuant to the provisions of paragraph (b) of section 6 of this Act.

SEC. 6. Any board of trade desiring to be designated a "contract market" shall make application to the Secretary of Agriculture for such designation and accompany the same with a showing that it complies with the above conditions, and with a sufficient assurance that it will continue to comply with the above requirements.

(a) A commission composed of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General is authorized to suspend for a period not to exceed six months or to revoke the designation of any board of trade as a "contract market" upon a showing that such board of trade has failed or is failing to comply with any of the above requirements or is not enforcing its rules of government made a condition of its designation as set forth in section 5. Such suspension or revocation shall only be after a notice to the officers of the board of trade affected and upon a hearing: *Provided,* That such suspension or revocation shall be final and conclusive unless within fifteen days after such suspension or revocation by the said commission such board of trade appeals to the circuit court of appeals for the circuit in which it has its principal place of business by filing with the clerk of such court a written petition praying that the order of the said commission be set aside or modified in the manner stated in the petition, together with a bond

in such sum as the court may determine, conditioned that such board of trade will pay the costs of the proceedings if the court so directs. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Secretary of Agriculture, chairman of said commission, or any member thereof, and the said commission shall forthwith prepare, certify, and file in the court a full and accurate transcript of the record in such proceedings, including the notice to the board of trade, a copy of the charges, the evidence, and the report and order. The testimony and evidence taken or submitted before the said commission duly certified and filed as aforesaid as a part of the record shall be considered by the court as the evidence in the case. The proceedings in such cases in the circuit court of appeals shall be made a preferred cause and shall be expedited in every way. Such a court may affirm or set aside the order of the said commission or may direct it to modify its order. No such order of the said commission shall be modified or set aside by the circuit court of appeals unless it is shown by the board of trade that the order is unsupported by the weight of the evidence or was issued without due notice and a reasonable opportunity having been afforded to such board of trade for a hearing, or infringes the Constitution of the United States, or is beyond the jurisdiction of said commission: *Provided further,* That if the Secretary of Agriculture shall refuse to designate as a contract market any board of trade that has made application therefor, then such board of trade may appeal from such refusal to the commission described therein, consisting of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General of the United States, with the right to appeal as provided for in other cases in this section, the decision on such appeal to be final and binding on all parties interested.

(b) If the Secretary of Agriculture has reason to believe that any person is violating any of the provisions of this Act, or is attempting to manipulate the market price of any grain in violation of the provisions of section 5 hereof, or of any of the rules or regulations made pursuant to its requirements, he may serve upon such person a complaint stating his charge in that respect, to which complaint shall be attached or

contained therein a notice of hearing, specifying a day and place not less than three days after the service thereof, requiring such person to show cause why an order should not be made directing that all contract markets until further notice of the said commission refuse all trading privileges thereon to such person. Said hearing may be held in Washington, District of Columbia, or elsewhere, before the said commission, or before a referee designated by the Secretary of Agriculture, who shall cause all evidence to be reduced to writing and forthwith transmit the same to the Secretary of Agriculture as chairman of the said commission. That for the purpose of securing effective enforcement of the provisions of this Act the provisions, including penalties, of section 12 of the Interstate Commerce Act, as amended, relating to the attendance and testimony of witnesses, the production of documentary evidence, and the immunity of witnesses, are made applicable to the power, jurisdiction, and authority of the Secretary of Agriculture, the said commission, or said referee in proceedings under this Act, and to persons subject to its provisions. Upon evidence received the said commission may require all contract markets to refuse such person all trading privileges thereon for such period as may be specified in said order. Notice of such order shall be sent forthwith by registered mail or delivered to the offending person and to the governing boards of said contract markets. After the issuance of the order by the commission, as aforesaid, the person against whom it is issued may obtain a review of such order or such other equitable relief as to the court may seem just by filing in the United States circuit court of appeals of the circuit in which the petitioner is doing business a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission by delivering such copy to its chairman or to any member thereof, and thereupon the commission shall forthwith certify and file in the court a transcript of the record theretofore made, including evidence received. Upon the filing of the transcript the court shall have jurisdiction to affirm, to set aside, or modify the order of the commission, and the findings of the commission as to the facts, if supported by the weight of the evidence shall in like manner be conclusive. In

proceedings under paragraphs (a) and (b) the judgbent and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 240 of the Judicial Code.

SEC. 7. Any board of trade that has been designated a contract market in the manner herein provided may have such designation vacated and set aside by giving notice in writing to the Secretary of Agriculture requesting that its designation as a contract market be vacated, which notice shall be served at least ninety days prior to the date named therein as the date when the vacation of designation shall take effect. Upon receipt of such notice the Secretary of Agriculture shall forthwith order the vacation of the designation of such board of trade as a contract market, effective upon the day named in the notice, and shall forthwith send a copy of the notice and his order to all other contract markets. From and after the date upon which the vacation became effective the said board of trade can thereafter be designated again a contract market by making application to the Secretary of Agriculture in the manner herein provided for an original application.

SEC. 8. For the efficient execution of the provisions of this Act, and in order to provide information for the use of Congress, the Secretary of Agriculture may make such investigations as he may deem necessary to ascertain the facts regarding the operations of boards of trade, whether prior or subsequent to the enactment of this Act, and may publish from time to time, in his discretion, the result of such investigation and such statistical information gathered therefrom as he may deem of interest to the public, except data and information which would separately disclose the business transactions of any person and trade secrets or names of customers: *Provided,* That nothing in this section shall be construed to prohibit the Secretary of Agriculture from making or issuing such reports as he may deem necessary relative to the conduct of any board of trade or of the transactions of any person found guilty of violating the provisions of this Act under the proceedings prescribed in section 6 of this Act: *Provided further,* That the Secretary of Agriculture in any report may include the facts as to any actual

transaction. The Secretary of Agriculture, upon his own initiative or in cooperation with existing governmental agencies, shall investigate marketing conditions of grain and grain products and by-products, including supply and demand for these commodities, cost to the consumer, and handling and transportation charges. He shall likewise compile and furnish to producers, consumers, and distributors, by means of regular or special reports, or by such methods as he may deem most effective, information respecting the grain markets, together with information on supply, demand, prices, and other conditions in this and other countries that affect the markets.

SEC. 9. Any person who shall violate the provisions of section 4 of this Act, or who shall fail to evidence any contract mentioned in said section by a record in writing as therein required, or who shall knowingly or carelessly deliver for transmission through the mails or in interstate commerce by telegraph, telephone, wireless, or other means of communication, false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of grain in interstate commerce, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, be fined not more than $10,000 or imprisoned for not more than one year, or both, together with the costs of prosecution.

SEC. 10. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

SEC. 11. No fine or imprisonment shall be imposed for any violation of this Act occurring before the first day of the second month following its passage.

SEC. 12. The Secretary of Agriculture may cooperate with any department or agency of the Government, any State, Territory, District, or possession, or department, agency, or political subdivision thereof, or any person; and shall have the power to appoint, remove, and fix the compensation of such officers and employees, not in conflict with existing law, and make such expenditures for rent outside the District of Columbia, printing, telegrams, telephones, law books, books of reference, periodicals, furniture, stationery,

office equipment, travel, and other supplies and expenses as shall be necessary to the administration of this Act in the District of Columbia and elsewhere, and there are hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for such purposes.

Approved, September 21, 1922.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1935.

No. 747

HENRY A. WALLACE, SECRETARY OF AGRICULTURE, AND HENRY A. WALLACE, SECRETARY OF AGRICULTURE, HOMER CUMMINGS, ATTORNEY GENERAL, AND DANIEL C. ROPER, SECRETARY OF COMMERCE, SITTING AS A COMMISSION UNDER THE GRAIN FUTURES ACT,

Petitioners,

vs.

ARTHUR W. CUTTEN,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENT.

FRANCIS X. BUSCH,
ORVILLE J. TAYLOR,
JAMES J. MAGNER,
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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1935.

No. 747.

HENRY A. WALLACE, SECRETARY OF AGRICULTURE, AND HENRY A. WALLACE, SECRETARY OF AGRICULTURE, HOMER CUMMINGS, ATTORNEY GENERAL, AND DANIEL C. ROPER, SECRETARY OF COMMERCE, SITTING AS A COMMISSION UNDER THE GRAIN FUTURES ACT,

Petitioners,

vs.

ARTHUR W. CUTTEN,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR THE RESPONDENT.

OPINION BELOW.

The opinion of the Circuit Court of Appeals for the Seventh Circuit (R. 479) is reported in 80 Fed. (2d) 140.

JURISDICTION.

The judgment of the Circuit Court of Appeals, reversing the order of the Grain Futures Commission, was entered November 25, 1935 (R. 483-484).

Petition for certiorari was filed February 6, 1936, and was granted on March 9, 1936 (R. 485).

The jurisdiction of this Court rests on Section 6 (b) of the Grain Futures Act, c. 369, 42 Stat. 1001 (U. S. C., Tit. 7, sec. 10) and Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936 (U. S. C., Tit. 28, sec. 347).

QUESTIONS PRESENTED.

Petitioners' paraphrase of Section 6 (b) under this heading (Pet. Br. p. 2) is incorrect. It is not for the violation of "any regulation" (which would include the mere failure to file reports, or the filing of inaccurate reports), separate and apart from an attempt to manipulate the market price of grain, or other violation of the act, that proceedings may be instituted by the Secretary of Agriculture under Section 6 (b). *Current attempts* (presumably national in effect) *by individuals, seeking to manipulate the market price of grain are the activities contemplated to be circumvented by the processes of the section.* Under the provisions of Section 5 (b), and as a condition to the designation of the contract market the governing board of the market is required to provide for the filing of reports, either by the board or by any member thereof, as the Secretary may direct. Responsibility, for the filing of reports, in such form and at such time or times, as is required by the Secretary of Agriculture, was thus

centralized and devolved upon the contract market, and made a condition of its continued existence as such.

The statement (Pet. Br. p. 3) that the Commission "made findings sustaining the charges in the complaint" is not correct. The complaint (R. 11) charged (1) that during 1930 and 1931 there existed a criminal conspiracy between the respondent and others, to conceal his trading and position in the market from the Grain Future Administration, and (2) that respondent attempted to manipulate the market price of grain, and in furtherance of such attempt concealed his transactions by failing to file reports and by filing false reports. The Commission *did not* find that any such conspiracy existed. Neither the fourteen findings of fact made by the Commission, nor the discussion of the evidence which precedes them (R. 451-465), made any specific finding that the failure to report, or the alleged inaccurate reports, was the result of a conspiracy. The first charge stated in paragraph 1 of the complaint may, therefore, be disregarded for the purposes of this review.

The commission did find (R. 464) that the respondent attempted, during 1930 and 1931, to manipulate the market price of grain. It based this finding of ultimate fact, (which was and is necessary to the Commission's order, in order to bring the proceeding within the scope of Section 6 (b)), primarily upon the findings that the respondent filed no reports during 1930, and filed allegedly false reports during 1931.

An attempt is made at various portions of the petitioners' brief (Pet. Br. p. 41) to justify the Commission's order on the ground that the respondent *could* be barred from trading in contract markets for the failure to file reports, and for the filing of inaccurate reports—dissociated from any attempt to manipulate. The respondent disputes the

validity of such position. The provisions of Section 6 (b), were intended only to circumscribe and purge presently operative practices seeking to manipulate the market price of grain. The legislation did not contemplate that individuals were to be ordered barred from trading in contract markets for the mere failure to file reports or for filing false reports. The sponsors of the legislation regarded any suggestions which would require the Secretary to pursue the individual, as a dilution of the Secretary's power over the contract market.

STATUTE INVOLVED.

The complete Grain Futures Act is set forth in an appendix to Petitioners' Brief, pages 139 to 149.

STATEMENT OF THE CASE.

In order to invoke the extraordinary power of the Grain Futures Commission, created under Section 6 (a) of the Grain Futures Act, it is required by Section 6 (b) of the same act, that the Secretary of Agriculture shall entertain the belief that some person *is violating* the act, or *is attempting* to manipulate the market price of grain in violation of Section 5 thereof or the rules and regulations made pursuant to its requirements.

The complaint (R. 10-25) in this case, filed April 9, 1934, charged that during the years *1930* and *1931*, the respondent *had* attempted to manipulate the market price of grain, and that in furtherance of said attempt he *had*, in conspiracy with others, failed and refused to file reports, filed false reports and caused "his account" (R. 11, Par. 3) to be "split" and divided.

It was neither alleged, nor proved that the respondent

was, at the time of the proceeding, either violating the Grain Futures Act or then engaged in an attempt to manipulate the market price of grain. It further appeared that the reporting requirements were suspended by the Secretary of Agriculture on October 24, 1932, and remained so suspended until July 20, 1933 (R. 178).

The questions of law, appropriately preserved throughout the proceeding before the Commission, by motions to quash and to dismiss, (R. 461) require the judicial ascertainment of the meaning, scope and purpose of Section 6 (b) and the extent of the power of the Secretary of Agriculture and of the Commission thereunder.

Respondent contends: That the act contemplates (and considered as a constitutional enactment could only contemplate) the initiation of proceedings seeking only to purge the market of *presently* pending manipulative practices *as such*, and that the construction of the unambiguous language of the section arrived at in the opinion of the Circuit Court of Appeals, should be sustained.

Petitioners, in effect, contend: That the section was intended by the Congress to authorize the Secretary of Agriculture to bring about the institution of punitive proceedings which seek an order barring accused individuals from the right to trade in the contract markets, for any period of time to be fixed solely by the Commission, and for *past* violations having no relationship to any present administrative necessities; that it was intended by the Congress, to confer such power *as well as* the power to institute proceedings seeking to purge a present practice from the markets; that if the plain, unambiguous language means anything less, then the responsibility rests with the courts to extend the statute by construction in order to prevent the power of the Secretary of Agriculture in the regulation of the contract markets from being reduced to a "nullity."

The foregoing represents the primary issue precipitated by this proceeding.

A collateral question, introduced by petitioners for the first time in the Circuit Court of Appeals and also insisted upon here, is involved in petitioners' contention that the respondent *could* also be barred for the mere failure to file reports during 1930, or for having filed inaccurate reports during 1931—*separate and apart from any attempt to manipulate the market price of grain.* This subsidiary question is precipitated by the petitioners' assertion that even if the charge of attempted manipulation, *upon which the Commission's order was based,* were to be regarded as not supported by the weight of the evidence, nevertheless, under the statute, the order *could* be based upon those findings of evidentiary fact from which rose the *ultimate conclusion* motivating both the complaint and the order. Respondent does not agree with the contention, for, it is submitted, the Commission did not enter an order based on that theory. This should in itself be a complete answer. Furthermore petitioners' contention is not in accordance with the intent of the Act, for, under Section 5 (b) thereof, in order to avoid a decentralization of responsibility, it was made a condition precedent and subsequent to the continued licensed existence of the contract market that the governing board thereof provide for the making and filing of reports, either by the board or by the members, as determined by the Secretary of Agriculture, and in such form as the Secretary of Agriculture shall direct.

Assuming, but not conceding, the jurisdiction and power asserted, and constitutional legislation conferring and preserving both the asserted jurisdiction and the power, then the factual question presented is the propriety of the Commission's conclusion that: the respondent attempted to manipulate the market price of grain during the years 1930 and 1931.

The foregoing conclusion (R. 464-465), which is the conclusion of ultimate fact relied upon to support the order, (petitioners' argument (Br. 41) to the contrary notwithstanding) is grounded on two findings of evidentiary fact, namely, that respondent filed no reports during 1930, and filed allegedly false reports during 1931. On this point (R. 464) the Commission said that respondent's trading during the two years was not "purposeless" and that "the evidence as a whole leads the Commission inescapably to the conclusion that respondent was attempting to manipulate the price of wheat."

While insisting that "there is no serious dispute between the parties as to most of the ultimate facts involved in this proceeding" (Pet. Br. 40) and that this case "comes before this Court upon a practically undisputed fact situation" (Pet. Br. 41), nevertheless petitioners have presented under this heading of their brief an extended discussion of the evidentiary facts, which, while substantially correct within the limits to which the discussion is carried, refrains from a particularization of those circumstances which would aid the respondent. To supply the lack at this point, would be to usurp the function of argument.

It is sufficient to say, that the Chicago office of the Grain Futures Administration was in full possession of all facts concerning Mr. Cutten's trading, his accounts, and the accounts of his relatives, from the year 1927 until 1932, when the reporting requirements were suspended. *It is the undisputed testimony of five* (R. 59, 75, 87, 98, 106) *witnesses that with respect to the particular years singled out by the petitioners, the auditing representatives of the Chicago office of the Grain Futures Administration, examined the books and records of the commission houses during the very same years and were familiar with the exist-*

ence of the accounts. Such representatives did not, during this period, make any complaint with respect to the same.

Omissions in reporting were known to the Chicago supervisor (R. 153, 173) as early as the month of March, 1930, and discussed by him with his superiors. (R. 173.) In view of the fact that there was no evidence of an attempt to manipulate the market, and the fact that the inference of such attempt was drawn by the Commission solely from the known infractions of the reporting requirements, the alleged two year investigation* produced no substantial facts about the accounts not known to auditors for the Grain Futures Administration during 1930 and 1931. The question whether such reports as were filed were correct or incorrect, turns upon the meaning to be given to the reporting regulations; for instance, the interpretation to be given the word "control" as used in the regulations. (R. 437) Many of the accounts involved were those of Mr. Cutten's relatives, and obviously he had no property interest therein. If they were not his, he was not under any duty to report them.

We shall reserve for discussion under Point III of this brief and argument, respondent's amplification of the facts referred to in the petitioners' statement, from which it will appear that the charge that the respondent attempted to manipulate the market during 1930 and 1931, is a conclusion not supported by the evidence.

It may be of some assistance to the court to clarify some of the trade terms used in the briefs and in the record.

Grains traded in on the Chicago Board of Trade, in futures, are wheat, corn, oats, rye, and barley.

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* Respondent contends that the real motive for the assertion that it took two years to determine if he was subject to prosecution under the Grain Futures Act, is to explain the Secretary's failure to act within two years under a section of the Act which only authorizes a proceeding to purge a presently existing practice.

In the case of wheat, the usual months during which deliveries are made are May, July, September and December.

Contracts made earlier than the delivery month, and calling for delivery during such months, are called "futures," *i. e.*, May "future," July "future."

In any delivery month, as for example July, all then outstanding open contracts must be closed *not later than the last business day of that month.* Any member "long" July wheat must sell it out in the "pit," or take delivery of it.

Any member "short" wheat must buy it back in the pit, or actually deliver it.

Members of the Chicago Board of Trade may be put into two general classes: clearing and non-clearing members. Clearing members are those who hold a membership in the Clearing Association, and who have direct contact with the member who is taking the other side of any transaction which is made.

Non-clearing members, in order to have a transaction consummated, may either file their orders through a clearing member, who charges them one-half the rate of commission charged nonmembers, or may themselves execute their own orders and have them cleared by some clearing member. It was the practice of respondent to give his orders to a clearing member, who handled them just as those of any other customer would have been handled.

SUMMARY OF ARGUMENT.

I.

The theory of statutory regulation expressed in the Grain Futures Act contemplates the self-regulation of the licensed contract markets by the governing boards thereof, under governmental supervision. The responsibility for the making and filing of reports, whether by the board or the members, for the prevention of the manipulation of prices and dissemination of false and misleading market information, is made a condition precedent and subsequent to the continued enjoyment by the contract market of its designation as such.

Comparison of the provisions of Section 6 (a) and 6 (b) and Section 9 of the Grain Futures Act, requires the conclusion that Section 6 (b) was intended *only* to provide a method for purging the contract markets of current practices seeking to manipulate the market price of grain. The section was not intended to authorize the institution of purely punitive proceedings long after the practices have ceased.

In each case arising under the statute the essential inquiry is whether or not the evidence received will justify the conclusion that the accused person is attempting to manipulate the market price of grain, and each case presents a new and separate inquiry.

In the case at bar, it was neither alleged, nor proved, that the respondent was attempting to manipulate the market price of grain at the time of the filing of the complaint. The complaint was not initiated, in accordance with either the letter or the intent of the statute.

If Section 6 (b) may be invoked by the Secretary of Ag-

riculture after the passage of three years, it can be invoked after the passage of ten years. To construe the Act as authorizing the Secretary of Agriculture to proceed thereunder at any time selected by him would be contrary to the national policy as expressed in statutes of limitations for far more serious offenses.

Examination of the legislative history of the Future Trading Act (the immediate statutory predecessor of the Grain Futures Act), indicates that the intent and purpose of the legislation was the prevention and frustration of manipulative practices.

Since Congress did not, in Section 9 of the Act, provide for the punishment of either manipulation, as such, or attempts to manipulate, it is improper for petitioners to draw the implication that an administrative agency was authorized to institute punitive proceedings.

The scrutiny, consideration and revision to which Section 6 of the original Future Trading Act was subjected when it reached the Senate Committee on Agriculture and Forestry (which added Section 6 (b)), precludes any conclusion that the differing language employed in the respective sections was the result of "inadvertence." It appears from the context of the respective sections and from the testimony of witnesses before the Committee that the language of each section was advisedly chosen. It is apparent that the Congress recognized that in the one section it was dealing with the licensed contract market, as such, and in the other section, dealing with the rights of individuals.

II.

Petitioners insist upon a construction of Section 6 (b) which would authorize the issuance by the Grain Futures Commission of orders barring accused individuals from

trading privileges in contract markets as the penalty for alleged attempts to manipulate the market price of grain. In this case, the order relates to an alleged attempt during the years 1930 and 1931. The order of the Commission is intended solely as punishment for past transgressions.

To construe the Act as contended for by petitioners would render the section unconstitutional, because:

(1) It would assume an attempt by the Congress to confer upon a legislative agency, the members of which are procured from the executive branch of the government, the purely judicial power to order the infliction of a penalty for the violation of law;

(2) The accused individual would be denied a trial by jury in violation of the Constitution;

(3) There would be a lack of due process in a proceeding designed to impose a penalty, in that one of the members of the administrative tribunal is permitted to occupy the dual capacity of complainant and judge;

(4) There would be a further lack of due process, because, the statute supplies no statutory definition of the terms "manipulate," "manipulation," or "attempt to manipulate."

It is not consistent with our theory of government to permit the fact of guilt and the duration, extent and nature of punishment, to be determined and adjudged by legislative agencies.

Authorities involving the revocation of licenses by administrative agencies are not here applicable, since the Congress of 1922 did not undertake to require licenses from individuals making contracts for the future delivery of grain.

III.

The Commission's conclusion that respondent attempted to manipulate the market price of wheat during 1930 and 1931, which is predicated primarily upon the failure to

comply with reporting requirements of the Secretary of Agriculture during 1930 and 1931, is not supported by the weight of the evidence.

From reports filed by grain commission houses reflecting the respondent's market activity, respondent's failure to file reports during 1930 was known to the Chicago supervisor of the Grain Futures Administration, and discussed by him with his superior officers during that year. It is the testimony of five witnesses that auditors for the Chicago office of the Grain Futures Administration examined the books of the Commission firms during 1930 and 1931, knew of the existence of the accounts involved, and made no suggestions with respect to the method of reporting them.

The evidence shows that the holdings in all accounts, even when treated on a combined basis, were not of such magnitude during 1930 and 1931 as to warrant inference that there was a purposeful concealment of respondent's position in the market, and the activities of the Grain Stabilization Corporation, during these years, were of such magnitude that the market activities of an individual trader could have no effect on the market price of grain.

Analysis of price fluctuations selected by the complaint discloses that respondent's transactions had no effect on the market price of wheat.

ARGUMENT.

I.

SECTION 6 (b) OF THE GRAIN FUTURES ACT WHEN CONSIDERED EITHER APART FROM, OR TOGETHER WITH, THE REMAINDER OF THE ACT CONFERS UPON THE SECRETARY OF AGRICULTURE ONLY THE POWER TO INSTITUTE REMEDIAL PROCEEDINGS DESIGNED TO PURGE THE MARKET OF ANY THEN EXISTING MANIPULATIVE PRACTICES. THE SECTION DOES NOT PURPORT TO CONFER POWER UPON THE SECRETARY OF AGRICULTURE TO INSTITUTE PROCEEDINGS DESIGNED SOLELY TO PUNISH FOR PAST VIOLATIONS HAVING NO RELATION TO EXISTING CONDITIONS.

It is respondent's contention that the Secretary of Agriculture and the Commission have misinterpreted the text and misconceived the purpose of Section 6 (b) of The Grain Futures Act of 1922. In order to provide the basis for a proceeding punitive in character, it is sought to extend, by construction, legislation which was only intended to furnish an administrative process preventive in its objective.

It is further contended that the interpretation of the Act insisted upon by the Secretary and the Commission, is, as applied to the facts of this case, clearly unconstitutional. It would divert the Act to a punitive course. If upheld it would deprive the respondent, and any other accused persons similarly situated, of the right to trial by jury before punishment is inflicted. It would amount to a usurpation of the functions of court and jury by administrative agencies.

The question presented by the interpretation of Section

6 (b) involves more than mere nicety of language. It is important, not alone to this respondent, that the proper construction of Section 6 (b) be ascertained. When properly interpreted, there is thereby disclosed, in respect of the particular legislation here reviewed, a line of demarcation between that which *might* on the one hand be regarded as an appropriate function for an administrative agency, and that which, ostensibly administrative, would be in fact and purpose, an exercise of power and duty reposed in our system of courts and juries.

Respondent will discuss, in order, the legislation, its text, history and purpose, returning thereafter to a discussion of petitioners' criticisms of the decision reached by the Circuit Court of Appeals, asserted by petitioners under points I and II and III of their brief and argument.

The Grain Futures Act, approved September 21, 1922, was the second attempt by the Congress to regulate exchanges and boards of trade whereon trading in "futures" takes place. On August 21, 1921, the 67th Congress, at its first session, enacted an act similar in structure to the present act, but differing in one important aspect. The first act, known as the Future Trading Act, was an attempt to regulate trading in grain futures under the authority of the taxing power. That act was declared unconstitutional by this Court in the case of *Hill* v. *Wallace,* 259 U. S. 44, decided on May 15, 1922. The 67th Congress, being then in its second session, revised the act so as to bring the legislation within the purview of the Commerce Clause, but with that exception the Grain Futures Act retained much of the detail of the Future Trading Act.

The validity of the Grain Futures Act was also challenged, but this Court declared it to be a constitutional enactment in *Board of Trade* v. *Olsen,* 262 U. S. 1.

In the *Olsen* case the complainants attacked the validity

of Section 6 (b), because a jury trial was not afforded, and on that point this Court said, at page 43:

> "Paragraph (b) of § 6 which gives to the Commission the power, on complaint after investigation by the Secretary of Agriculture, and after a hearing, to exclude from all contract markets any person violating any of the provisions of the act or attempting to manipulate the market price of any grain in violation of the provisions of § 5 of the act or of any of the rules or regulations made in pursuance to its requirements, is attacked as invalid because a jury trial is not afforded. The plaintiffs do not aver that they are committing acts which will subject them to such exclusion, or that charges have been made and proceedings have been begun or are about to be begun against them by the Secretary of Agriculture. Until they are thus in danger of suffering prejudice from the operation of the paragraph, they can not invoke our decisions as to its validity."

In the case at bar, since the Secretary's complaint does not charge (nor the evidence establish) that the respondent *was attempting to manipulate the market price of any grain, or that he was violating the act at the time of the institution of the complaint, the precise question* presented, is whether the act was intended to authorize purely punitive proceedings, and the question respecting the constitutionality of Section 6 (b) is precipitated by the unconstitutional interpretation sought to be given to the act by the Secretary and the Commission.

By the enactment of the Grain Futures Act, the Congress sought to reach two evils, the prevalence of which, it will appear from a reading of the Congressional investigations, had been the subject of much discussion prior to the World War—sudden and unreasonable dislocation of prices of grain as a consequence of the manipulation of such prices on the various grain markets of the country, and a correlated practice, the dissemination of false and misleading information respecting crop or market conditions. During

the World War, when grain exchanges were voluntarily placed under close government supervision, valuable experience was gained which served to point the way for the legislation.

The fundamental method adopted by the Congress in order to reach and prevent the practices complained of, was the licensing of the meeting places or markets whereon and through the facilities of which, contracts were made by individuals for the future delivery of grain. The law is based on the theory that the markets will co-operate with the Government in making the law effective. The theory of the Act is self-regulation under government supervision. There was no attempt made to license individual members of, or traders upon, boards of trade. The pertinent provisions establishing the method are found in Section 5 of the Act.

Under that section, in order for a board of trade to procure a license or designation as a "contract market" from the Secretary of Agriculture, the applicant shall: (1) be at a terminal market where sufficient cash grain is handled to reflect its market value; (2) its *governing board* shall provide for the making and filing of reports, either by its members or by the board, as the Secretary of Agriculture shall direct, and in such form as the Secretary shall direct; (3) such governing board shall provide for the prevention and dissemination by the board, or its members, of false, misleading or knowingly inaccurate reports concerning crop or market conditions; (4) such governing board shall provide for the prevention of the manipulation of prices for the cornering of any grain by dealers or operators upon such board; (5) shall provide for admitting co-operative associations of producers to membership; and (6) provide the means for making effective orders under Section 6 (b).

It will be observed that the making of reports, whether by the board or by the members, the prevention of manipu-

lation or the cornering of any grain by dealers or operators on such boards, the means of making effective exclusion orders under Section 6 (b), are all made a *condition* to the license or designation of the contract market. In order to procure such designation, *not only* must the applicant make a showing that it complies with the statutory requirements, but it must likewise supply assurance *"that it will continue to comply with the above requirements."* The text of the act reflects the philosophy, that if boards of trade were likely to suffer the loss or suspension of their respective licenses or designations, either because reports were not provided for and rendered as required, or because grain was cornered and the prices thereof manipulated by the dealers or operators upon such board, such fear would automatically compel a close supervision and policing of the contract market by its own governing board or elected officials. In marked contrast to the Commodity Exchange Act,* now pending before the United States Senate—the Congress thought in 1922, to avoid a decentralization of responsibility which would have been occasioned by a more direct and detailed supervision of the many individuals who might choose to engage in the business of trading in cash grain or grain futures, whether as principal or otherwise.

It is against this background of approach, so manifest in the structure and in the administration of the act, that the provisions of Sections 6 (a), 6 (b), and 9 are to be considered.

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*H. R. 6772, 74th Congress, 1st Session, passed by the House on June 3, 1935, and now pending in the Senate, converts the present Grain Futures Act to the "Commodity Exchange Act," extends and expands the governmental supervision over trading in grain and other commodities, provides for the licensing of commission merchants and floor brokers, *specifically amends Section 6 (b) to include past violations of the act,* creates cease and desist orders, and provides criminal punishment for the disobedience thereof. (Italics ours.)

PERTINENT SECTIONS COMPARED.

Under Section 6 (a), whenever it is made to appear to a commission composed of the Secretary of Agriculture, Secretary of Commerce, and the Attorney General, that a contract market "has failed or is failing" to comply with any of the requirements made a condition to its designation, it may be ordered suspended for a period *not to exceed six months,* or its designation as such contract market revoked. Such proceedings must exhibit the following characteristics:

(a) There must be a notice to the officers of the contract market and a hearing.

(b) The order of suspension or revocation does not become final and effective until fifteen days after its issuance.

(c) If, within said fifteen-day period an appeal be perfected to the circuit court of appeals for the district in which is located the principal place of business of the market, the order of suspension does not become effective *until the disposition of the appeal.*

The provisions of Section 6 (b) are in marked contrast.

First. Since whatever peril there may be of manipulative practices, is far more likely from those not members of, and subject to, the disciplinary action of boards of trade than from the members of such boards, the Secretary is authorized to direct his complaint against *any person.*

Second. The Secretary of Agriculture must *have reason to believe* that the accused person *is violating* some of the provisions of the act, or *is attempting to* manipulate the market price of grain, in violation of the provisions of Section 5, or of the rules and regulations made by boards of trade pursuant to the requirements of said Section 5. It is not for a mere failure to have filed reports, or, for having filed inaccurate reports, apart from any attempt to manipu-

late, that proceedings are authorized. Current attempts to manipulate the market price of grain are the activities reached by the interdict of the Commission. The Secretary's belief in the existence of a present practice is the jurisdictional basis for the initiation of the complaint.

Third. Upon the issuance of a complaint conforming to the statute, a hearing may be held upon three days' notice.

Fourth. The hearing may be held by the Commission at Washington, D. C., or by a referee designated by the Commission.

Fifth. The burden of disproving the charge of manipulative practice is placed upon the accused. Thus, for any reason sufficient to arouse a belief, whether it be based upon evidence submitted, or merely upon gossip or false rumor, the Secretary may issue a complaint compelling the accused to assume the burden of disproving charges contained in the complaint.

Sixth. An order may be entered excluding the offender from all contract markets for such period as shall be fixed by the Commission, and such an order is to be sent to the markets and carried into execution forthwith.

In the event of appeal, the section, *by its terms,* grants no right to a supersedeas, as in the case of Section 6 (a), and whether or not such order of the Commission shall be stayed during appeal rests entirely in the discretion of the circuit court of appeals, and turns on the merits of the application therefor. Unless the Congress had in mind a present and pressing situation, there would have been no reason for not allowing the accused the right to supersedeas as in the case of the contract market in the immediately preceding section.

In Section 9 of the act, the Congress *selected and provided* the punishment for those acts deemed by it of sufficient importance to be treated by criminal prosecutions.

Under that section, if any person shall violate Section 4 of the act (making contracts of sale of grain for future delivery illegal—unless on the contract markets or within the exceptions to the act), or shall fail to evidence any contract of sale by a record in writing, or shall knowingly or carelessly deliver through the mails or in interstate commerce, false or misleading information concerning crop or market conditions, he shall be deemed guilty of a misdemeanor, and shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than one year, or both. The section does not declare a punishment for manipulation or attempts to manipulate the market price of grain, for the reason that a punishment was already provided for such offenses in the then existing statutes. Section 2 of the Anti-Trust Act of 1890 (U. S. C., Tit. 15, Sec. 2) provides that: "Every person who shall monopolize, or attempt to monopolize, or conspire with any other person or persons, to monopolize, any part of the trade or commerce of the several states" shall be guilty of a misdemeanor punishable by a fine or imprisonment, or both. It was this law upon which the prosecution in the case of *United States* v. *Patten,* 226 U. S. 525, was based, in which the complaint charged a conspiracy to corner the cotton market.

Thus from all of these sections is the legislative pattern of regulation to be gathered.

First: The Secretary may proceed, before the Commission, against *the contract market* and seek to revoke its designation as such whenever it appears that it "has failed or is failing" to enforce rules and regulations designed to prevent manipulation or is not otherwise complying with the conditions of its license.

Second: If the Secretary has reason to believe that *any* individual *is violating* any of the provisions of the act, or is attempting to manipulate the market price of grain, he may proceed in the manner contemplated by the section to

frustrate and prevent the successful consummation of the violation or of the manipulation.

Finally: If the violation happens to be one covered by the provisions of Section 9 of the act, the Secretary may, (1) if the practice is being employed at the time, and in order to prevent its successful culmination, close all contract markets to the offender (under Section 6 (b)), and (2) cause the institution of criminal proceedings in respect of such violations as appear to have been consummated, either under Section 9 or under the provisions of the Sherman Anti-Trust law.

INTENT OF THE ACT.

It is submitted that by Section 6 (b) the intent and purpose of the Congress was to provide the Secretary of Agriculture with a summary process only, whereby, acting upon an existing abuse as such, the Secretary would be enabled to purge the market of manipulative practices *at the time* of the alleged occurrences. Under this interpretation of the section, whenever the Secretary proceeds against an offender upon the belief that a practice is then being employed which is manipulative, the Commission would determine the guilt of the offender, *not* for the purpose of fixing a punishment, but for the purpose of determining the existence of and purging from, the contract market the manipulative practices. The determination of the guilt of the offender is, under such circumstances, merely *incidental* to clearing the market of a then existing abuse. The fact, that, in contrast to Section 6 (a), the period of suspension is placed solely within the discretion of the Commission, and no maximum period is fixed in Section 6 (b), is further proof that the suspension is designed for prophylactic and not for punitive purposes.

On the other hand, when the Secretary, as he does

in the case at bar, charges that the respondent *has attempted* to manipulate the market and it appears that such violations occurred *more than three years prior* to the complaint, no proper administrative purpose is being even *prima facie* subserved, and the undisguised object of the proceeding is the punishment of the offender. The last is a function, we submit, not authorized by the text of Section 6 (b), because if it was, the section would be unconstitutional for failure to afford a jury trial, and for contemplating the assumption of judicial duties by persons and individuals not authorized by the Constitution to discharge such functions.

As bearing on the likelihood that the Congress contemplated that punishment for an attempt to manipulate prices could be held in suspension indefinitely (because if the Secretary of Agriculture is permitted to invoke this section after three years, there is no reason why he could not invoke it after ten years), it is interesting to note the expressed national policy as to punishment for much more serious offenses.

Prosecutions of offenses under the Bankruptcy Act must be instituted within one year (U. S. C. A., Tit. 11, § 52 (d)), courts-martial for all offenses other than desertion, mutiny and murder must be prosecuted within two years (U. S. C. A., Tit. 10, § 1510), and prosecutions of all other criminal offenses against federal laws, except wilful murder, and offenses involving the defrauding of the United States, are barred in three years (U. S. C. A., Tit. 18, §§ 581, 582).

Respondent does not concede, even under the foregoing interpretation of the act, that the section is a constitutional enactment, but, since the complaint in this case did not charge that the respondent was attempting to manipulate the market price of any grain at the time the complaint was brought, *the precise question* presented is whether Section 6 (b) was intended by the Congress to apply to

complaints where the offenses complained of are not alleged to be presently occurring and where the suspension order is requested as a punitive, not an administrative remedy.

The section must also be considered in the light of the practicalities of future trading. Trading in grain futures begins, usually, eight months prior to the delivery month. It may be assumed, for the purposes of illustration, that Smith is attempting to manipulate upward the market price of July wheat by acquiring an extremely "long" position, calling for the delivery to him of wheat during July, and not later than July 31st. If during July his contracts therefor, exceed the supply of wheat available for delivery, a corner seems imminent. As a result of gossip, or reports, either from individuals or from commission houses, or from the volume of trading in futures, or from the apparent price trend, or from complaints, or from a special call for reports issued to the contract markets, the exchange supervisor has reason to suspect Smith. It is reported to the Secretary of Agriculture. Being so advised, a complaint may be then initiated and served upon Smith charging the attempt to manipulate and calling for a prompt hearing before the end of the delivery month. The object of the Secretary under this hypothesis is not a punishment of Smith for past misconduct but administrative action on the Secretary's part primarily and fundamentally designed to purge the market of the manipulative practice and its possible result. As a *practical matter,* the very service of such a complaint upon one who had such a market position, would almost immediately result in forcing the accused to liquidate his holdings, the effect of which would be to make available a supply of that future of wheat and bring about a breaking up of the threatened corner. A desire to avoid the possible consequences of the hearing, would in the very nature of things bring about such an

immediate change in market conditions that it would probably be even unnecessary to proceed to an actual hearing on the complaint. By this method, did the sponsors of the legislation contemplate to rout an individual manipulator, not long after public good could be subserved, but at the very moment of the practice. A successful consummation of the manipulative scheme is thus prevented, which is all that the Congress of 1922 intended to accomplish. This, the respondent submits, was and is, the obvious intended purpose and scope of Section 6 (b), and a common-sense interpretation of the text thereof. It is not intended to be a section whereby each trifling violator, who had or had not filed a report, was to be summoned before a commission consisting of three busy cabinet officials, three years after the alleged violations occurred, thus transforming the commission and reducing it to the level of a police court.

It is submitted that even when viewed from an administrative viewpoint, this construction of Section 6 (b) which is within the language actually used, has much to commend it. Aside from the proposition that the Congress so stated and so intended, is it not preferable to construe this act as providing a means for the prevention of abuses, rather than to construe it as providing for the punishment of individuals long after opportunity for correction has passed? Construing the statute as authorizing punitive proceedings permits of administrative inaction.

In the case of *Lake County* v. *Rollins,* 130 U. S. 662, at page 670, this court said:

> "To get at the thought or meaning expressed in a statute, a contract or a constitution, the first resort, in all cases, is to the natural signification of the words, in the order of grammatical arrangement in which the framers of the instrument have placed them. If the words convey a definite meaning which involves no absurdity, nor any contradiction of other parts of the instrument, then that meaning, apparent on the face

of the instrument, must be accepted, and neither the courts nor the legislature have the right to add to it or take from it. *Newell* v. *People,* 7 N. Y. 9, 97; *Hills* v. *Chicago,* 60 Illinois, 86; *Denn* v. *Reid,* 10 Pet. 524; *Leonard* v. *Wiseman,* 31 Maryland 201, 204; *People* v. *Potter,* 47 N. Y. 375; Cooley, Const. Lim. 57; Story on Const. Sec. 400; *Beardstown* v. *Virginia,* 76 Illinois, 34. So, also, where a law is expressed in plain and unambiguous terms, whether those terms are general or limited, the legislature should be intended to mean what they have plainly expressed, and consequently no room is left for construction. *United States* v. *Fisher,* 2 Cranch. 358, 399; *Doggett* v. *Florida Railroad,* 99 U. S. 72."

LEGISLATIVE HISTORY BEARING ON POLICY.

It is, of course, a settled principle of law reflected in the decisions of this court, that where, as in the case at bar, the language of a statute is plain, certain and unambiguous, there is no room for statutory construction (*Helvering* v. *New York Trust Co.,* 292 U. S. 455, 464) and, therefore, resort to testimony taken in committee hearings, reports of committees, and Congressional debates, is neither necessary nor usually permissible. However, the petitioners seek to convince the court that there is *another* meaning implied, if not expressed, in the statute, and therefore, for the purpose of indicating the *policy* of the act, and as vindicating the decision of the Circuit Court of Appeals respondent desires to make brief reference to certain excerpts from the legislative history of the Future Trading Act, and the Grain Futures Act.

Representative J. N. Tincher of Kansas had been the sponsor of future trading legislation in the House of Representatives, and Senator Arthur Capper of Kansas was the sponsor in the Senate. The original future trading legislation had been known as the Capper-Tincher bill. While both of these men were active leaders in the advance-

ment of the legislation in their respective branches of Congress, the reports of committee hearings and the Congressional discussions indicate that Mr. Tincher had a deep, abiding, and active interest in the furtherance of the legislation. He actively interested himself in the committee hearings, and attended not only the committee hearings held by his own committee, but as well the committee hearings of the Senate Committee.

As furnishing some indication of the frame of mind and the philosophy of approach of one of the sponsors of the legislation, we have quoted in the margin* an exchange

*From page 183 of Hearings before House Committee on Agriculture and Forestry on Future Trading, 67th Congress, 1st Session, April 25, 26, 27, 28, 29 and May 2, 1921.

"Mr. Aswell: Why could not this matter be referred to the Federal Trade Commission?

Mr. Tincher: I do not want it to die. The Federal Trade Commission only investigates and makes reports and they are printed at some time. I want it distinctly understood that I think the Federal Trade Commission has some function in Government, and do not want you to misunderstand my statement here; *but I do not want the Secretary of Agriculture to wait thirty days even if there is some violation of this law* * * *

Mr. Griffin: The difficulty is that the Secretary of Agriculture under this proposed bill does not ask the exchanges to cease and desist *but he revokes their designation as a contract market* * * *

Mr. Tincher: How would this fit the case: *Such revocation shall be only after notice to the officers of the board of trade and opportunity offered them to cease and desist in the practiced complained of or to correct the violation complained of.* And then provide that after the Secretary of Agriculture shall have made an order, if you want to, and I see no objection to it, the party complained of shall have the right of appeal from the revocation.

Mr. Griffin: That would harmonize exactly with my views. I am after the substance and not the form, for after the substance is agreed to, the form can be worked out.

Mr. Tincher: What I want is for the *Secretary of Agriculture to have the right to stop any improper practices then and there.* If he is wrong about the practice complained of and the exchange is right, I want to leave that authority with some Government official and not with the exchange * * *" (Italics ours.)

of comments occurring while the House Committee was considering bills designed to regulate future trading in grain. As petitioners suggest, at the time that these remarks were made, Section 6 (b) *was not* a part of the act, being added in the Senate Committee, but the comments serve now, to furnish some indication of the *background* and *purpose* of a bill of which the section became a part and to which it would obviously have to conform. From Mr. Tincher's remarks it is manifest beyond doubt that the objective of the legislation was the creation of a method or methods to prevent and stop manipulative practices—punishment as such was a secondary consideration.

Section 6 (b) was added in the Senate Committee hearings, (and we shall have occasion hereinafter in this argument to discuss the origin thereof and to demonstrate that its text is not a mere "inadvertence") but it will appear from Mr. Tincher's remarks,* made in the House during a debate of the amendments proposed by the Senate, that prevention of manipulation was then, and is today, the primary purpose of the legislation.

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*From Congressional Record, pp. 5559, *et seq.*, 67th Congress, First Session, Part 6, Volume 61, August 22-October 20, 1921:

Mr. Tincher: Mr. Speaker and gentlemen of the House, I think every Member who has followed the bill will agree that the only changes made in the Senate are changes in the language, that the gentleman from Pennsylvania (Mr. Kelly) called attention to. As the bill passed the House it authorized the Secretary of Agriculture to designate places as market places and required the exchange to file an application in which they would include limitations upon trading. In the Senate they had considerable discussion over that proposition, and, of course, the difficulty of that proposition is apparent to anyone. One season of the year limitation in transactions in grain is reasonable, and at another season of the year it would be unreasonable. In one year certain limitations would be reasonable and another year it would be unreasonable. *It was deemed best by the friends of the measure to give the Secretary of Agriculture the power to prevent manipulations.* The question of the definition of the manipulation of the market came up. I attended the hearings in

One year later, when, after the decision in the case of *Hill* v. *Wallace*, 259 U. S. 44, the House Committee was considering the present Grain Futures Act, one of the witnesses before the committee had pointed out to the committee that in spite of the fact that the avowed purpose of the legislation was to prevent manipulation, no penalty was provided therefor. Mr. Tincher's response* clearly demonstrates that this most active leader in the Congress on the subject under discussion, was well aware that the act did not and does not provide either a penalty or a punishment for those who have manipulated prices. There is, of course, no such provision in the act. Congress placed *prevention* of manipulation above punishment. Notwithstanding, the Secretary of Agriculture insists in this court that *he* should be permitted to accomplish that which the Congress did not see fit to authorize—that *he* should be allowed to constitute himself prosecutor, judge and jury,

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the Senate and the debate on the floor of the Senate, and I finally agreed to these changes on this theory, that so long as there was no legal definition of manipulation, the Secretary of Agriculture had the power to require rules and regulations on the part of the exchange to prevent manipulation of prices, and, perhaps, we could not afford to complain of the fact that there was no definition of manipulation.

Mr. Kelly of Pennsylvania: Is the gentleman from Kansas assured that the Secretary of Agriculture has the power to prevent manipulation if it is necessary?

Mr. Tincher: Yes; and, inasmuch as there is no definition, he is the judge of it himself.

*From page 35 of Hearings before Committee on Agriculture, House of Representatives, 67th Congress, Second Session, June 7, 8, 9, 12, 1922, Grain Futures Act.

"Mr. Tincher: You suggested a while ago that this bill does not prescribe a penalty, that it does not provide a *punishment* for manipulating the market. You are entirely right about that, because we have a law now that does that. *The object of this bill was not to punish some man that manipulated the market, but to prevent manipulation.*" (Italics ours.)

Mr. Gates: Yes; but even though you assume it will prevent it, you have no penalty for it.

Mr. Tincher: Well, we have a Federal law that provides a penalty for it, and that law does not prevent it."

and inflict a penalty upon accused individuals of his own selection and for a period of his own duration—else the act becomes a "nullity."

In the light of the text of the act and the history of the legislation, respondent submits that the *most favorable* constitutional view that can be taken of Section 6 (b) is that it was intended *only* to vest with the Secretary of Agriculture, an alternative and subsidiary method by which he could, if the occasion arose, stop a then existing practice without the necessity of resorting to the revocation of the license of the contract market. The law contemplated that if continued and repeated manipulations took place through the facilities of the contract markets, that then the governing board thereof must necessarily be at fault, and that *future adherence* to the law would be brought about by the disciplinary action meted out to the licensed board of trade or contract market involved. It is respectfully submitted that this particular proceeding was not brought within either the letter or the spirit of the Act, and that the Circuit Court of Appeals correctly and accurately construed the section involved.

PETITIONERS' CONTENTIONS DISCUSSED.

At considerable length petitioners have discussed the nature of the reporting requirements, the relationship thereof to the prevention of manipulation, posing conveniently extreme hypothetical cases, *no one of which is present on the facts of this case* as the standard for analysis. Petitioners have chosen to ignore the ultimate and fundamental charge made against this respondent, and one necessary in order to bring the proceedings within the scope and purpose of Section 6 (b), namely, that the respondent during 1930 and 1931 attempted to manipulate the market price of grain. It is asserted in criticism of the holding by the Cir-

cuit Court of Appeals that "such opinion eviscerates the act, and, if sustained, failures to report would probably occur in wholesale fashion and thereby wreck the regulatory scheme." The entire argument proceeds upon a false assumption, and petitioners betray an unsuspected lack of appreciation of the policy and structure of the Grain Futures Act.

Section 6 (b) of the act is concerned with and directed against the frustration of attempts to manipulate the market price of grain, and the current dissemination of false crop and market information. It is not concerned with the enforcement of the reporting requirements as such. The latter is primarily the responsibility of the governing board of the contract market. Under the provisions of Section 5 (b), it is definitely and precisely made a condition to the continued existence of the contract market that the governing board thereof provide for the making and filing of reports *either* by the board, or by the members thereof, as the Secretary of Agriculture may direct. Thus the question of which method shall be employed, is left entirely in the hands of the Secretary of Agriculture, and thus the final and ultimate responsibility for the adequacy of reports and compliance with the requirements is placed squarely upon the shoulders of the *governing board* of the contract market. The construction adopted by the Circuit Court of Appeals in this case cannot "wreck the regulatory scheme" because, if for any reason, the Secretary is dissatisfied with the method, or results achieved in procuring reports from individual members he can change the method and require the board to provide the reports. We dare say that the very threat to board officials that it would have to set up a comprehensive mechanism to procure compliance with reporting requirements would be sufficient to bring about and correct any wholesale neglect in the reporting requirements.

Furthermore, it will appear from the comments of Mr. Tincher appearing in the margin,* which were made while this very question was being discussed in the House Committee on Agriculture and Forestry, that, as one of the sponsors of the legislation, he was unwilling to provide a method which would permanently decentralize responsibility by requiring the Secretary of Agriculture to pursue every individual member of the market in order to procure reports. Section 6 (b) was not then part of the Act, but it is submitted that, in the interest of both centralized responsibility and economy, the Grain Futures Act of 1922 made the responsibility for the filing of reports in such form as the Secretary shall direct, a condition to the continued existence of the contract market. It is therefore idle to argue that unless the provisions of Section 6 (b) are construed as contended for by the petitioners, that the regulatory scheme will be wrecked.

Bartlett Frazier Co. v. *Hyde,* 65 Fed. (2d) 350, (cert. den. 290 U. S. 654) was concerned primarily with the right of the Grain Futures Administration to *inspect* books of the commission houses.

Petitioners profess an inability to understand respondent's assertion in the brief filed in opposition to the petition for writ of certiorari that "in each case the inquiry is one of fact." (Respondent's Brief in Opposition to Writ of Certiorari, p. 13.)

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*From hearings on "Future Trading" before Committee on Agriculture, House of Representatives, 67th Congress, First Session, on H. R. 168, 231, 2238, 2331, 2363, 5228, April 25, 26, 27, 28, 29, May 2, 1921:

Page 174:

(After discussion with witness and various committee members relative to reports.)

"Mr. Tincher: I did not want the Secretary of Agriculture to have to go to the two hundred firms out there and I did not want him to have to have any fuss with any firm. I wanted him to have his fuss with the exchange, because the exchange has more power over its members than anybody else."

It is respectfully submitted that whether applied to infractions of the reporting requirements *and* attempts to manipulate, as the petitioners contend, or whether applied *only* to present attempts to manipulate the market price of grain, as respondent contends, or both, the ultimate question to be determined in every case arising under Section 6 (b) is whether the evidence will reasonably justify, and lead the mind to, the conclusion that the accused individual is engaged in violating the act, or is attempting to manipulate the market price of grain. In one of the very cases cited by the petitioners, and relied upon by them in another connection, *Farmers' Livestock Commission Co.* v. *United States,* 54 Fed. (2d) 375, it was charged by the Secretary of Agriculture that the plaintiffs in that case were *participating* in unfair and unjustly discriminatory practices, in violation of the Packers and Stockyards Act of 1921, as a consequence whereof the Secretary, in pursuance of Section 309 of the Act, instituted an investigation. In that case the Secretary found that plaintiffs *were participating* in an illegal boycott as charged, and suspended their registration as market agencies for a period of ninety days—specific provision being made in that legislation for the suspension of registration. The cited case is an authority for the proposition that the Secretary of Agriculture has found no difficulty in proceeding under statutes of this character.

FILING OF COMPLAINT NEED NOT BE DELAYED FOR EXTENSIVE AUDITS.

It is said that the amount of time necessary to expose violation is not always within the Commission's control, and petitioners point to the fact that representatives of the Administration consumed over two years in auditing books and checking records for the purpose of assembling the data, statistics and charts produced on the hearing. The

phraseology of Section 6 (b) neither contemplates, nor requires, a detailed preparation of audits.

In respect of this case, as we have already pointed out, no request was made of this respondent at any time, or at any place, for reports back of the date of November 1, 1931. The reports filed by him, in March of 1932, for the four months preceding were in order. (R. 166.) No difficulty was encountered in *ascertaining* any information. *The fact is established by the undisputed testimony of Messrs. Uhlmann* (R. 59), *Rigg* (R. 75), *Wade* (R. 87), *Prescott* (R. 98) *and Young* (R. 106) *that the accounts involved were known to and examined by the auditors for the Grain Futures Administration during 1930 and 1931.*

It is said by petitioners (Br. p. 50) that not only did the respondent fail to report, but the firms with whom the accounts were carried also failed to report. *The Commission made no finding of fact to this effect, and the statement is misleading.* The commission houses did report to the Grain Futures Administration during 1930 many accounts over 500,000 bushels (R. 149). However, due to the general custom and understanding in La Salle Street which prevailed until the summer of 1933, such houses did not combine all accounts appearing on their books and report them in accordance with what petitioners contend the regulations mean (R. 88, 89; R. 111, 112).

TIME CONSUMED BY PROCEEDINGS.

The next argument advanced by the petitioners in support of their contention that Section 6 (b) should be construed as *also* authorizing purely punitive proceedings, is that the period of time necessary for the hearings contemplated by the act is so long as to be inconsistent with an attempt to provide prompt action. We take issue with that assertion. It seems to us that when fairly viewed in all its

aspects the proceeding is extremely summary in character—so extremely summary that respondent declines to concede the constitutionality of the section, even in the light of what its plain language contemplates. Petitioners argue, however, that although only three days' notice is required, that the evidence must be reduced to writing; that busy cabinet officers must hear the charges; all of which, it is asserted, is inconsistent with a prophylactic purpose or objective. In respect of the question whether or not Section 6 (b) is summary in character, the test is *not* that period of time which a benign secretary or commission *may* grant to the accused, but what that accused is *entitled* to under the act. By virtue of the text of Section 6 (b) the accused is only *entitled* to three days' notice. Any period in excess of three days depends upon the Secretary's frame of mind. Under the language of Section 6 (b), the burden of showing and establishing to the Secretary why he should not be barred from all contract markets is placed upon the accused, thus by the very language of the section implying that either a *bona fide* explanation, or promise of future compliance, is sufficient to discharge the burden. The hearing *may* be held at Washington, and need *not* be held at any other point in the United States if the Secretary so determines. The Secretary may, but he need not, designate a referee. Thus, if the Secretary wishes to accelerate the proceedings in the face of what, it may be assumed, is a critical market situation, Section 6 (b) is plainly susceptible of a policing procedure, which would set the hearing down before a full commission within a period as short as five days, and, since the Commission may make its own rules of procedure, oral arguments, briefs, etc., need not be had or filed in any proper case regarded by the Commission as pressing and in which the fundamental *inquiry is one of fact.* This demonstrates

clearly the summary and peremptory character of the proceedings contemplated by the act, and illustrates our contention that the speed with which the proceeding *is consummated* is entirely in the hands of the Secretary of Agriculture and the Commission.

Petitioners have referred to the fact that overburdened cabinet officials are required to serve as members of the Commission. With petitioners, respondent shares a regret that duties of such character are imposed on such responsible officials. But the petitioners would require such officers to perform a merely magisterial type of duty long after any public good could be subserved. We hold no brief for a statutory scheme which requires such cabinet officers, already overburdened with duties, to act as policemen for contract markets, but as long as the act is limited (as it is under Section 6 (a)) to the revocation of the license of the contract market—such markets are not very numerous; and if, as we contend, the Commission deals, under Section 6 (b) only with situations where the Secretary alleges a present manipulation, which would undoubtedly be of national consequence, some real public service is being rendered and no great burden is imposed on the Commission. On the other hand, to torture the plain words of the section, in order to punish for alleged violations three years old, and after the particular crops involved have been harvested, converted, and consumed and thus place *more* onerous and ineffective duties on these officials in order to justify this particular proceeding, does not appear to us as sensible.

PETITIONERS' CASES DISTINGUISHED.

Under Point II of their argument (p. 69 *et seq.*) petitioners have asserted that Section 6 (b) should be given a practical meaning. Respondent joins in that statement, and respectfully insists that such practical meaning has

been fully and clearly pointed out. But, say the petitioners, the choice here is between "meaning and nullity." We challenge that proposition. The choice here is between the meaning, so definitely expressed, and a plan of regulation discernable in the statute, and the petitioners attempt to acquire, by construction, a power not expressed and which, under our Constitution, Congress itself could neither exercise nor confer upon any administrative agency.

Petitioners cite the cases of *Church of the Holy Trinity* v. *United States*, 143 U. S. 457; *United States* v. *Kirby*, 7 Wall. 482; *Reiche* v. *Smythe*, 13 Wall. 162; *Silver* v. *Ladd*, 7 Wall. 219; *United States* v. *Lacher*, 134 U. S. 624; *United States* v. *Katz*, 271 U. S. 354; *Sorrells* v. *United States*, 287 U. S. 435; *The Emily*, 9 Wheat. 381; *Helvering* v. *Stockholms Enskilda Bank*, 293 U. S. 84; *Ash Sheep Co.* v. *United States*, 252 U. S. 159; *United States* v. *Corbett*, 215 U. S. 233; *Johnson* v. *Southern Pacific Ry. Co.*, 196 U. S. 1; *United States* v. *Bowman*, 260 U. S. 94; *Hawaii* v. *Mankichi*, 190 U. S. 197.

One central theme runs throughout these cases which it is impossible to dispute: All laws should receive a sensible construction. In some of the foregoing authorities the construction of penal statutes, when ascertained, required a holding that the accused individuals were not within either the spirit or the intent of the legislation; in others, it was held that it would defeat the obvious intention of the enactment to hold that the accused individuals were *not* within the intent of the statute. In one case the word "man" was construed to include "woman." In another, the word "cattle" was construed to include "sheep." The cited authorities represent sound dispositions of the particular situations and the particular statutes there involved, but no one case is, on its particular facts, applicable here.

The court will note, however, that even in the cases cited

by the petitioners, the language of statutes penal in character, was never unnecessarily extended beyond its plain meaning in the process of construction. *United States* v. *Corbett*, 215 U. S. 233, 243.

Petitioners also cite the cases of *The Sterling*, 65 Fed. (2d) 439; *Huidekoper's Lessee* v. *Douglas*, 3 Cranch. 1; *Heydenfeldt* v. *Dancy Gold, etc. Co.*, 93 U. S. 634; *Hayden* v. *Ortkeiss*, 83 Ky. 396; *Louisville Southern Railroad Company's Receivers* v. *Lewis*, 101 Ky. 296, 41 S. W. 3; *Malloy* v. *Chicago & North Western R. Co.*, 109 Wis. 29, 85 N. W. 130; *Rutherford* v. *Greene's Heirs*, 2 Wheat. 196; and *Maysville & Lexington R. R. Co.* v. *Herrick*, 76 Ky. 122. With the exception of *The Sterling*, 65 Fed. (2d) 439, all of the foregoing cases reflect situations wherein the legislature sought, or intended, to assist persons, or to afford a remedy for some distressing situation. The statutes were remedial—as distinguished from penal statutes. The former are to be liberally construed—the latter are to be strictly construed, although no obvious intent will be disregarded. Cases, therefore, which deal with remedial statutes, enacted for the purpose of assisting persons, and which, unlike penal statutes, are to be liberally construed, hardly support the contention that the provisions of Section 6 (b) are to be so construed as *to include* the power to inflict a punitive penalty. Furthermore, in respect of the language of Section 6 (b), there is little room for debate. The language is plain and unambiguous. The use of the present tense throughout the section is in marked contrast to that of the preceding section and occurs, not once but twice, in connection with the proceedings authorized.

In the case of *The Sterling*, 65 Fed. (2d) 439, the words there involved were obviously plainly employed as words of past tense; furthermore, the forfeiture took place on the commission of the act, and the later libel proceedings were merely steps relating back to the time of the forfeiture. An

entirely different intent is manifested in the statute here under consideration.

When isolated from the setting of cases with which petitioners' proposition is surrounded, petitioners' contention amounts to an invitation to this court to construe the phrase "is violating" and the phrase "is attempting to manipulate the market price of any grain" as if the respective phrases contained the words "has violated" and "has attempted" notwithstanding that this construction would take in *all* violations under the act, the criminal punishment for some of which is already provided for by Section 9. It is submitted that such a construction is contrary to the accepted principles which govern the construction of statutes penal in their general character.

THE APPROPRIATE RULE OF CONSTRUCTION.

Since Section 6 (b) employs language diametrically opposed to that of the preceding Section 6 (a), and since, taken with all the other sections of the statute, it clearly evidences the desire to reach and cure a present situation only, there is to be employed the rule of construction referred to in the case of *Commonwealth* v. *Woodring,* 289 Pa. 437, 137 Atl. 635, at p. 639, where, in dealing with the antithetical use of the words "shall" and "may" in the same statute, the Pennsylvania court said:

> "This conclusion is buttressed by another rule of construction, viz., that where, in an agreement, will, or statute there is a change in the method of expression, the presumption, usually of great force, is that the intention was to give to the later words a different meaning from those formerly used. Hence, when the legislature said, in the act of 1925 that certain things 'shall' be done and, later, that certain others 'may' be done, the presumption is that it meant just what it said, else why did it not continue the use of 'shall'?"

The construction contended for by the petitioners draws

the Commission and the Secretary into a whole host of questions respecting the constitutionality of such a proceeding, all of which will be dealt with and discussed at length under Point II of this brief.

In the case of *United States* v. *Delaware & Hudson Co.*, 213 U. S. 366, at page 407, the court said, referring to a rule of construction:

> "It is elementary when the constitutionality of a statute is assailed, if the statute be reasonably susceptible of two interpretations, by one of which it would be unconstitutional and by the other valid, it is our plain duty to adopt that construction which will save the statute from constitutional infirmity. *Knights Templars Indemnity Co.* v. *Jarman*, 187 U. S. 197, 205. And unless this rule be considered as meaning that our duty is to first decide that a statute is unconstitutional and then proceed to hold that such ruling was unnecessary because the statute is susceptible of a meaning, which causes it not to be repugnant to the Constitution, the rule plainly must mean that where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter. *Harriman* v. *Interstate Com. Comm.*, 211 U. S. 407."

In the case of *United States* v. *Jin Fuey Moy*, 241 U. S. 394, at page 401, the court said:

> "A statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score."

And in the case of *Federal Trade Commission* v. *American Tobacco Co.*, 264 U. S. 298, at page 307, the court said:

> "We cannot attribute to Congress an intent to defy the Fourth Amendment *or even to come so near to doing so as to raise a serious question of constitutional law.*" (Italics ours.)

Petitioners in this case contend for a construction of Section 6 (b) which does raise grave and serious doubts respecting the constitutionality of the section, because it

raises the question of whether or not under our Constitution, an executive or administrative agency may determine the guilt of an offender without trial by jury, in a proceeding having no other objective than the infliction of a purely punitive penalty.

SUSPENSION ORDER IS DESIGNED FOR PREVENTIVE PURPOSES.

It is suggested by the petitioners (Br. p. 86) that if Congress had intended to provide only a prophylactic process, it would have empowered the Commission to enter a cease and desist order. While it may lack legal significance, it lacks nothing of interest, to point out that when the language of Section 6 (b) is compared with the statute authorizing the Federal Trade Commission to issue cease and desist orders,* there is a noteworthy similarity in the language employed, with this exception: the Federal Trade Commission Act employs the phrase, "has been or is using any unfair method of computation." Section 6 (b) is an application of the theory of the Federal Trade Commission Act "cease and desist order" to the practicalities of the contract market.

Petitioners suggest that because the order of suspension is made operative upon all licensed contract markets, that

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*From 15 U. S. C. A. 45—

"• • • *Procedure by commission.* Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint." • • •

Congress must have had in mind punitive proceedings. Petitioners say (Br. p. 87):

> "If the purpose had been merely to check an existing course of violation, it would seem clear that the authority granted to the Commission would have been to order the denial of trading privileges upon that market or markets upon which the violation was actually continuing."

The answer to this proposition is obvious, and clearly indicates the preventive character intended for the proceeding. The Commission, having found that the accused person is manipulating upon one contract market, orders him excluded from further trading in that contract market in order to break up the practice thereon, *and orders him excluded from trading in all the other contract markets, so that the manipulative activities may not be extended from one contract market to another, or the manipulative practice thrust from one contract market only to have it successfully consummated through the facilities of another.* The fact that an accused person is found to be attempting to manipulate the market price of grain upon one market would constitute a real and present threat to the remaining licensed contract markets. There would be no point in breaking up a manipulation upon one board of trade and leaving five or six other contract markets open whereon the same manipulator might conduct his activities. The argument is utterly without force to aid the petitioners in the extension of the construction of Section 6 (b) which is contended for, and in fact is another indication of the intent of Congress to provide, not a method of punishment but a method of prevention.

THE LANGUAGE OF SECTION 6 (b) WAS SELECTED AND EMPLOYED ADVISEDLY. IT IS CLEAR AND UNAMBIGUOUS.

While admitting, that when different words are used in a statute (Br. p. 88 *et seq.*) "the difference in language may properly be regarded as mirroring a difference in intent," petitioners assert that it is improper to employ the principle in the case at bar, for the reason that Section 6 (b) originated in the Senate; and Section 6 (a), or its predecessor, in the House Committee. From this the petitioners draw the conclusion that the difference in wording was "inadvertent and not deliberate and premeditated." (Pet. Br. p. 91.)

While under well-settled principles of statutory construction, petitioners' argument has no application to a situation where the language is clear and unambiguous, it may be discussed on its merits.

Petitioners' statement that Sections 6 (a) and 6 (b) originated in different committees is not a *complete* statement of the fact. The fact is that when the Future Trading Act was passed by the House and received by the Senate Committee (as H. R. 5676) it contained a provision shown in the margin* authorizing the Secretary of Agriculture to

* From page 1394 of the Congressional Record, Vol. 61, Part 2, 67th Congress, First Session, May 5 to June 3, 1921.

"SEC. 6. That any board of trade desiring to be designated a 'contract market' shall make application to the Secretary of Agriculture for such designation and accompany the same with a showing that it complies with the above conditions, and with a sufficient assurance that it will continue to comply with the above requirements. The Secretary of Agriculture is authorized to suspend for a period not to exceed six months or to revoke the designation of any board of trade as a 'contract market' upon a showing that such board of trade has failed or is failing to comply with the above requirements or is not enforcing its rules of government made a condition of its designation as set forth in section 5. Such suspension or revocation shall only be after a notice to the officers of the board of trade affected and upon a hearing: *Provided,* That

revoke the designation of a contract market. During the consideration of the bill in the Senate Committee, suggestions were made that the power of revocation of the designation of the contract market be vested with a commission, and that a process be created to oust individual manipulators—as one witness put it, "if he exists, and when he exists."*

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such suspension or revocation shall be final and conclusive unless within fifteen days after such suspension or revocation by the Secretary of Agriculture such board of trade appeals to the circuit court of appeals for the circuit in which it has its principal place of business by filing with the clerk of such court a written petition praying that the order of the Secretary of Agriculture be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine conditioned that such board of trade will pay the costs of the proceedings if the court so directs. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Secretary of Agriculture, and the Secretary of Agriculture shall forthwith prepare, certify, and file in the court a full and accurate transcript of the record in such proceedings, including the notice to the board of trade, a copy of the charges, the evidence, and the report and order. The testimony and evidence taken or submitted before the Secretary of Agriculture duly certified and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the circuit court of appeals shall be made a preferred cause and shall be expedited in every way. Such a court may affirm or set aside the order of the Secretary of Agriculture or may direct the Secretary of Agriculture to modify his order. No such order of his shall be modified or set aside by the circuit court of appeals unless it is shown by the board of trade that the order is unsupported by the weight of the evidence or was issued without due notice and a reasonable opportunity having been afforded to such board of trade for hearing, or infringes the Constitution of the United States, or is beyond the jurisdiction of the Secretary of Agriculture."

*Future Trading in Grain, Hearings before Committee on Agriculture and Forestry, United States Senate on H. R. 5676, 67th Congress, First Session.

From page 408.

"Mr. Wells. The Secretary acquiesced in that and, furthermore, we believe that the bill is greatly strengthened by

The original section was completely revised in the Senate Committee by dividing it into three paragraphs: the opening paragraph, section (a) and section (b). In Section 6 (a) was preserved the right of the Commission to revoke the designation of the contract market upon a showing that such board "has failed or is failing to comply," while in Section 6 (b) the language of the section was prepared and ultimately passed in the form submitted. A comparison of the original Section 6 with Sections 6 (a) and 6 (b), as finally enacted, discloses also several changes in Section 6 (a), including one to be found in the very sentence in which the words "has failed or is failing" appeared.

To say that the choice of language in Section 6 (b) was "inadvertent" is to ignore the fact that when Section 6 was revised, the language of what is now Section 6 (a) was before the Committee of the Senate for consideration. The argument ignores the circumstance that ultimately these amendments were considered by conferees of the House and Senate and concurred in. It ignores the further circumstance that in 1922, after the decision in *Hill* v. *Wallace*, this legislation again underwent committee

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the addition which we make to section 6 in paragraph (b). This becomes paragraph (a) of section 6, and the changes throughout, as I have said, are largely the substitution of the words 'said Commission' for 'Secretary of Agriculture,' and in line 22, as it would logically follow, the wording should be, 'may direct it to modify its order.'

Now, if the manipulator is to be driven from the markets, as we all wish him to be, *if he exists and when he exists*, there is no better way of doing it than to make him directly subject to the Federal law. The moral effect of direct action against the offender rather than against the exchange will, in our judgment, be the greatest possible deterrent to any attempted manipulation.

Paragraph (b) of section 6, which we have introduced, provides for the direct action against the manipulator or *one who is attempting to manipulate.*

Senator McNary: This is an entirely new provision?

Mr. Wells: This is a new provision and, in our judgment, strengthens the bill very much, because it provides for direct action against the guilty party. • • •"

analysis and consideration before its enactment into law. It ignores the circumstance that Congress was dealing with two entirely different situations. In the one, the Congress was concerned with the rights and duties of a contract market operating pursuant to a license to be issued under the act; in the other the Congress was concerned with ways and means of *preventing* individuals, nonmembers of such contract markets, from consummating a successful manipulative practice on and through, the facilities of the contract market.

The quotation from *Sutherland on Statutory Construction* offered by petitioners at page 97 of the brief, must be preceded by the following from Lewis' Sutherland Statutory Construction, Second Edition, Volume 2, (Chicago, 1904), where it is said:

> " 'It has been a general rule,' says Blackburn, J., 'for drawing legal documents from the earliest times, which one is taught when one first becomes a pupil to a conveyancer, never to change the form of words unless you are going to change the meaning; and it would be as well if those who are engaged in the preparation of acts of parliament would bear in mind that that is the real principle of construction.' Whether the change be by omission, addition or substitution of words, the principle applies. Where changes have been introduced by amendment it is not to be assumed that they are without design. * * *"

In the two cases cited by petitioners, *Fleischmann Co.* v. *United States,* 270 U. S. 349, and *Pickett* v. *United States,* 216 U. S. 456, were the legislative enactments there under consideration to have been construed otherwise than as the court determined, results would have followed which would have been clearly inconsistent with the purposes of the legislation *taken as a whole.* The purpose of this Act taken as a whole, is to prevent manipulation, not to punish it. Petitioners' construction is inconsistent with that purpose.

In the case of *Interstate Commerce Commission* v. *Illi-*

nois Central Railroad Co., 215 U. S. 452, while considering the scope of the review of an order of the Interstate Commerce Commission, Chief Justice White said, at page 470:

> "Beyond controversy, in determining whether an order of the commission shall be suspended or set aside, we must consider, a, all relevant questions of constitutional power or right; b, all pertinent questions as to whether the administrative order is within the scope of the delegated authority under which it purports to have been made; and, c, a proposition which we state independently, although in its essence it may be contained in the previous one, viz., whether, even although the order be in form within the delegated power, nevertheless it must be treated as not embraced therein, because the exertion of authority which is questioned has been manifested in such an unreasonable manner as to cause it, in truth, to be within the elementary rule that the substance, and not the shadow, determines the validity of the exercise of the power. *Postal Telegraph Cable Company* v. *Adams,* 155 U. S. 688, 698."

It is respectfully submitted that in its opinion, the Circuit Court of Appeals was guided by well-established and well-founded principles of the law.

II.

SECTION 6 (b) OF THE GRAIN FUTURES ACT OF 1922, AS CONSTRUED AND SOUGHT TO BE ENFORCED BY THE COMMISSION, IS UNCONSTITUTIONAL.

In this subdivision of the argument, respondent addresses himself to that construction of the act entertained by the Secretary of Agriculture and adopted by the Commission. (R. 454-461.) In the ensuing pages, respondent's contentions will be first discussed, followed by a discussion of the petitioners' criticisms thereof. To support the interpretation contended for by petitioners, Section 6 (b) must be read as if it contained the bracketed words: "[has violated or]—is violating" and "[has attempted or]—is at-

tempting to manipulate." The Secretary and the Commission, having thus interpreted the section, assert the power and authority to enforce the act pursuant to that interpretation, and to penalize the respondent for alleged violations three and four years old, although there is neither alleged, nor does there appear, any present administrative necessity for the order of suspension. In view of the admitted facts it will have to be conceded that no transaction concerning a July, 1931, future in wheat could relate to a condition existing in April of 1934. The effect of the interpretation placed upon the act by the Commission is to permit the Secretary of Agriculture to institute proceedings against anyone selected by him, when no administrative necessity therefor requires—when there is not alleged any claim of, or any belief in, a present violation, and when the manifest objective of the proceeding is as a punitive and not a preventive measure. As so interpreted and sought to be enforced, it is submitted that the section would be unconstitutional, for the following reasons:

First: As an attempt to confer upon a legislative agency, the members of which are procured from the executive branch of the government, the purely judicial power to order the infliction of a penalty for the alleged violation of law.

Second: Because there is a lack of due process in that in proceedings brought to inflict a penalty, the accused is denied a trial by jury in violation of the Sixth Amendment to the Constitution.

Third: Because there is a lack of due process in that such construction would permit of a tribunal in which the complainant would be one of the judges.

Fourth: Because there is a lack of due process in that the term "manipulate" is too vague and indefinite to become the proper statutory basis for the infliction of a penalty.

This argument respecting unconstitutionality is leveled against Section 6 (b), not as the section is written, but rather as the section has been interpreted by the Commis-

sion, in holding that this proceeding is within the contemplation of the statute and that it was intended to have jurisdiction thereof.

In the opinion of the Commission (R. 458-461) reliance was placed upon the opinions of the courts in the cases of *Farmers' Livestock Commission Co.* v. *United States,* 54 Fed. (2d) 375, and *Board of Trade of the City of Chicago* v. *Wallace et al.,* 67 Fed. (2d) 402. The cases cited, however, are cases wherein there was sought to be revoked a particular license or permit theretofore granted by an officer of the executive branch of the government, pursuant to an authority specifically conferred upon him by the legislative branch of the government. The courts were not there dealing with the features of a general basic law which by its terms is applicable to every individual.

Section 6 (b) of the Grain Futures Act is applicable to "any person."

It was deliberately made so, since the assumed peril of manipulative practices is not alone from persons or corporations subject to the disciplinary action of boards of trade.

EXERCISE OF JUDICIAL POWER AND DEPRIVATION OF RIGHT TO TRIAL BY JURY.

Article III, Section 1, of the Constitution reads as follows:

> "The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior; * * *.
>
> "SECTION 2. The trial of all crimes, except in cases of impeachment, shall be by jury; * * *."

No principle of American constitutional law is better

established than the proposition that the powers of the Federal Government are divided among three separate and distinct departments. The framers of the Constitution were well versed in the principle set forth by *Montesquieu* that, "in every government there are three sorts of powers" and, "there is no liberty if the judiciary power be not separated from the legislative and the executive." (Montesquieu "Spirit of the Laws," 1748.) State constitutions which were in existence before the drafting of the federal constitution embodied and clearly expressed this principle. Thus the Massachusetts Constitution adopted in 1780 provided:

> "In the government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; * * *"

This basic principle, enunciated in appreciation of the injustice which arises from the concentration of the judicial and executive powers in the same hands, led to the provision that all exercise of the judicial power, which includes all criminal cases, that is, proceedings to punish in the interest of the public any violation of law, must be carried to the courts established by Congress and presided over by judges who are independent of both the executive and legislative branches of the government. It is respectfully submitted that if this section were to be construed, as the Secretary has sought and as the Commission has held it must be construed, to be applicable to past conduct, however remote, then it would amount to permitting a legislative agency to institute inquiries, determine the fact of guilt, and fix the duration of the punishment in proceedings seeking the infliction of a penalty — a function which is, under our Constitution, reserved to the courts

to be discharged through the medium of a judicial trial. In this proceeding, there can be no question but that it is sought to bring about the adjudication of rights as the result of transactions which had occurred far in the past. The administrative tribunal is not concerned with finding the facts, and exercising its judgment thereon, within the limitations of a standard laid down by the Congress, as the basis for an order directing the conduct of the accused for the *future,* as is the case in the Federal Trade Commission cease and desist orders. Rather is the tribunal seeking to impose the penalty of suspension as a punishment for past transgressions. Whether a judicial power is being exercised is not to be determined by the *manner* in which a decision is reached, but by the *character* of the issue which the administrative agency undertakes to decide. In the case at bar, the issue which the administrative agency undertook to decide was the guilt or innocence of the accused, whether or not he should be punished, and if so, for what period. It is submitted that the imposition of the penalty laid down by the Commission is clearly a deprivation of the liberty of the respondent. It was accomplished in a proceeding which violated the due process clause in that the tribunal was not presided over by individuals, judges of the federal courts, and there was an exercise of judicial power by individuals not lawfully constituted.

We have found no case which better illustrates the line which this Court has already drawn between proper administrative action on the one hand and judicial action on the other, than the case of *Wong Wing* v. *United States,* 163 U. S. 228.

The national policy with respect to the admission or the exclusion of aliens is a subject matter over which the Congress exercises a plenary power—as distinguished from problems arising under the Commerce Clause of the Con-

stitution wherein the regulation of, and the control of the problem is circumscribed by limits of reasonableness. It is manifest, therefore, that that limitation which the law imposes upon the exercise of a plenary power should certainly be applicable to the exercise of a power already controlled by the bounds of reasonableness.

In the *Wong Wing* case, 163 U. S. 228, one section of the act there involved relating to the exclusion of Chinese aliens, provided that any such alien who was adjudged to be not lawfully entitled to be, or remain, in the United States should be *first* imprisoned at hard labor for a period not to exceed one year, and *thereafter* removed from the United States, the order to be made by any judge, justice or commissioner of the United States without a trial by jury.

The question thus presented by the case was whether the Congress could promote its policy in respect to Chinese persons by *adding to the provisions for their exclusion and expulsion,* a provision for their punishment by imprisonment at hard labor. In other words, the particular administrative or executive functions placed upon the executive officials were (a) the keeping of Chinese aliens out of the country, and (b) the expulsion of such Chinese persons as were already found to be unlawfully in the country. This law, however, contemplated that, in addition to the *executive* or *administrative* function of identifying and expelling the alien, and as part of such function, the alien could be ordered imprisoned at hard labor, without a trial by jury and upon the order of any judge, justice or commissioner of the United States. This Court held the section invalid, and in the opinion, at page 236, it is said:

> "Our views, upon the question thus specifically pressed upon our attention, may be briefly expressed thus: We regard it as settled by our previous deci-

sions that the United States can, as a matter of public policy, by Congressional enactment, forbid aliens or classes of aliens from coming within their borders, and expel aliens or classes of aliens from their territory, and can, in order to make effectual such decree of exclusion or expulsion, devolve the power and duty of identifying and arresting the persons included in such decree, and causing their deportation, upon executive or subordinate officials.

But when Congress sees fit to further promote such a policy by subjecting the persons of such aliens to infamous punishment at hard labor, or by confiscating their property, we think such legislation, to be valid, *must provide for a judicial trial to establish the guilt of the accused.*

No limits can be put by the courts upon the power of Congress to protect, by summary methods, the country from the advent of aliens whose race or habits render them undesirable as citizens, or to expel such if they have already found their way into our land and unlawfully remain therein. But to declare unlawful residence within the country to be an infamous crime, punishable by deprivation of liberty and property, would be to pass out of the sphere of constitutional legislation, unless provision were made that the fact of guilt should first be established by a judicial trial. *It is not consistent with the theory of our government that the legislature should, after having defined an offense as an infamous crime, find the fact of guilt and adjudge the punishment by one of its own agents.*" (Italics ours.)

In other words, as long as an executive officer sought merely to prevent aliens from coming in, or confined his activities to identifying and then expelling those unlawfully in, he acted within the scope of appropriate executive authority. The necessity for judicial intervention arose when the deprivation of liberty was resorted to as the punishment for being unlawfully within the United States, and not as part of the administrative control of an existing situation. So, in the case at bar, while it might be arguable that the Congress could lawfully devolve upon

the Secretary and the Commission the power of *detecting* and *preventing* manipulation, it certainly could not also lawfully devolve upon the Commission the power of determining the guilt and punishment of offenders, for past violations having no relationship at all to present conduct or administrative necessities. The latter proceedings, in their fundamental characteristics, are trials in which penalties are sought to be inflicted.

Justice Field, in the case of *Cummings* v. *State of Missouri*, 71 U. S. 277, wrote, at page 320:

> "The deprivation of any rights, civil or political, previously enjoyed, may be punishment, the circumstances attending and the causes of the deprivation determining this fact. Disqualification from office may be punishment, as in cases of conviction upon impeachment. Disqualification from the pursuits of a lawful avocation, or from positions of trust, or from the privilege of appearing in the courts, or acting as an executor, administrator, or guardian, may also, and often has been, imposed as punishment."

He further said, at page 321:

> "The theory upon which our political institutions rest is, that all men have certain inalienable rights—that among these are life, liberty, and the pursuit of happiness; and that in the pursuit of happiness all avocations, all honors, all positions, are alike open to every one, and that in the protection of these rights all are equal before the law. Any deprivation or suspension of any of these rights for past conduct is punishment, and can be in no otherwise defined."

As administrative action has developed in this country, it is concerned with the proper treatment of a present situation, or with the ascertainment and declaration of some rule of conduct for *future action*. In a lecture contained in "The Growth of American Administrative Law," Thomas Law Book Company (St. Louis, 1923), the late Professor Freund said, at pages 16-17:

> "What is it that distinguishes administrative action

> from judicial action? It is that judicial action presupposes some controversy or alleged wrong or delinquency, whereas administrative action operates as an incident in the normal course of affairs. Many persons go through life without getting into courts of justice; few can avoid contact with administrative authorities."

In a dissenting opinion in the case of *Central Pacific R. R. Co.* v. *Gallatin,* 99 U. S. 750-761, at page 761 of the opinion, Justice Field wrote that which, while it is contained in a dissenting opinion, is of general application as a proposition of law. He wrote:

> "The distinction between a judicial and a legislative act is well defined. The one determines what the law is, and what the rights of parties are, with reference to transactions already had; the other prescribes what the law shall be in future cases arising under it. Wherever an act undertakes to determine a question of right or obligation, or of property, as the foundation upon which it proceeds, such act is to that extent a judicial one, and not the proper exercise of legislative functions."

In the instant case, the Secretary makes no complaint that the respondent was, at the time of the institution of these proceedings, either "violating" the act, or "attempting to manipulate the market price of grain," which necessitated the intervention of an administrative remedy. The Commission was asked to concern itself solely with the question of determining the guilt or innocence of the accused with respect to past transactions, and the determination of a penalty to extend in the future. The penalty of suspension was inflicted as an expiation for the alleged transgressions.

In this connection, the *interpretation* placed by the Secretary and by the Commission upon Section 6 (b) does not differ in principle from *legislation* which was before this court in the case of *Champlin Refining Co.* v. *Commission,* 286 U. S. 210. In the *Champlin* case, the court was con-

cerned with the question of the constitutionality of an act of the State of Oklahoma providing for the regulation of oil-producing agencies. The legislation made it unlawful to produce petroleum in such a manner or under such conditions as to constitute "waste." Section 8 of the act made certain violations misdemeanors, punishable by fine or imprisonment. Section 9 of the same act also provided that in the event of a violation, the State of Oklahoma, through its Attorney General, might apply *for the appointment of a receiver to operate the producing wells of the violator and to market the production thereof.* In other words, there was virtual seizure of the violator's property by representatives of the state, which, in effect and in substance, is not unlike the order of suspension in this case which operates to remove the respondent from the field of business activity for an unreasonably long length of time. A proceeding was instituted under Section 9, and one of the questions raised on the appeal was the constitutionality thereof. This court held the section unconstitutional on the ground that it was not regulatory, but imposed a penalty purporting to punish violations of regulatory provisions of the act which were too vague and indefinite to furnish a standard of conduct. The court said, at page 240:

> "The context and language used unmistakably show that the section imposes a penalty and is not a measure in the nature of, or in aid of remedy by, injunction to prevent future violations. By § 6 the commission—which in respect of such matters is a court of record (state constitution, Art. IX, § 19)—is empowered to punish as for contempt violation of the commission's orders by fines up to $500 per day during continuance of such violation. §§ 3498, 3499, C. O. S. 1921. *Planters' Cotton & Ginning Co.* v. *West Bros.*, 82 Okla. 145, 147; 198 Pac. 855. And § 8 declares that, 'in addition to any penalty' that may be imposed by the commission for contempt, one directly or indirectly 'violating the provisions of this act' shall be guilty of a misdemeanor and be punished by fine or imprisonment.

> And similarly the liability under § 9 is for 'violating the provisions of this act' and is 'in addition to any penalty' imposed by § 8. Both deal with an act already committed. Moreover, liability under § 9 is not limited to seizure and operation of the offender's wells but extends to the marketing of his oil. Absolute liability arises from a single transgression, and prosecution therefor may be had after all occasion for restraint of production has ceased. There is nothing in the Act by which the duration of the receivership may be determined. An owner whose wells are so seized may not, as of right, have production reduced or withheld to await a better demand, or have any voice as to quantities to be produced, or continue to have his oil transported by means of his own pipelines or other facilities, or have it sent to his own refinery or delivered in fulfillment of his contracts. Plainly such a taking deprives the owner of property without compensation even if the moneys received for oil sold less expenses are accounted for by the receiver. The suit is prosecuted by the State to redress a public wrong denounced as crime. The provisions of § 9 are not consistent with any purpose other than to inflict punishment for violation of the Act and they must be deemed as intended to impose additional penalties upon offenders having oil producing wells. *Boyd* v. *United States*, 116 U. S. 616, 634. *United States* v. *Reisinger*, 128 U. S. 398, 402. *Huntington* v. *Attrill*, 146 U. S. 657, 667, 668."

It is therefore submitted that the Secretary of Agriculture and the Commission have interpreted Section 6 (b) of the Grain Futures Act as authorizing—in slightly different form though alike in principle, a type of punitive proceeding such as was under consideration in the *Champlin* case and was held invalid. The Secretary and the Commission have chosen to interpret the section as authorizing the punishment of a past transgression by a suspension to continue a definite time in the future, in this case two years. It is respondent's contention that the infliction of this penalty may be lawfully accomplished, if at all, only through the medium of a judicial trial by court and jury.

It is interesting in this connection to compare the action of the Interstate Commerce Commission.

In *Lehigh Valley R. Co.* v. *Clark,* 207 Fed. 717, is contained a discussion of the development of the jurisdiction of that commission in respect of the allowance of reparations. As pointed out in that opinion, Section 14 of the original Interstate Commerce Act provided that the investigation made by the Commission might also include a recommendation as to what reparation, if any, should be made by the parties found to have been injured—damages by way of reparation under that act being comparable in principle to the infliction of the penalty of suspension upon the facts involved in this case. As the act was originally drawn, the enforcement of all Commission orders, including orders allowing reparation to injured parties, was to be by equitable proceedings in the federal courts. Congress had contemplated no distinction between reparation cases and other cases in which the order of the Commission was concerned only with future regulations. As the court says, at page 720:

> "It is one thing to enforce by injunction or mandatory process the lawful ministerial order of the Commission, as to things to be done or not to be done *in futuro* by defendant carriers in the conduct of their business, and quite another thing to enforce an order for the payment of damages by such carriers for a *past* violation of law." (Italics ours.)

And in the case of *Heck & Petree* v. *Railroad Co.* 1 Interstate Commerce Commission Reports 498, at page 777, the Commission recognized such a distinction by itself holding that a claim for damages "presents a case at common law in which the defendants are entitled to a jury trial" under the Seventh Amendment to the Constitution. Since the original statute provided for no trial by jury in suits in the federal courts to enforce Commission reparation awards, the Commission had repeatedly held that it could make no

award of damages for the reason that the defendants were entitled to have the amount of such damages determined by a jury. The consequence of this undoubtedly correct position taken by the Interstate Commerce Commission resulted in an amendment to the Interstate Commerce Act, whereby the distinction between reparation cases and those cases in which the Commission was regulating future action was recognized. Under the present act, proceedings to enforce reparation awards are before the federal district courts and are to be tried "in all respects like other civil suits for damages." The enforcement of other orders which are not of a nature requiring trial by jury is accomplished by proceedings in district courts which are equitable in nature.

Thus, we find one of the oldest administrative commissions known to the federal government promptly recognizing the proposition that administrative tribunals, as a general proposition, are concerned with rules of conduct for the future, while the determination of rights and duties with respect to past transactions and the consequences thereof is left to the process of the judicial trial.

By Article III, Section 2, Clause 3, of the Constitution, it is provided:

> "The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed."

In the Sixth Amendment to the Constitution, the requirement of a jury trial is repeated, and the additional conditions imposed that the trial of persons accused of crime shall be speedy and public, the jury an impartial one, selected from the state and district wherein the crimes shall have been committed, which district shall have been previously ascertained by law, and that the accused shall be informed of the nature and cause of the accusation, be con-

fronted with the witnesses against him, have compulsory process for obtaining witnesses in his favor, and have the assistance of counsel for his defense.

It is respondent's contention on this point that if the Commission's interpretation of the section were to be accepted, then the section would become invalid because a jury trial is not afforded. The error in the Commission's construction of Section 6 (b) will become manifest if we consider the provision in connection with Section 9 of the same act.

The Commission has taken the view that the act may be read—(as 6(a) reads)—as if it contained the bracketed words:

> "If the Secretary of Agriculture has reason to believe that any person [has violated] or is violating any of the provisions of this act or [has attempted] or is attempting to manipulate the market price of any grain in violation of the provisions of Section 5 hereof * * *."

Thus the Secretary claims the right to institute, and the Commission the right to entertain, proceedings based on alleged violations of ancient origin and to punish for such violations even though there is no allegation that the accused person is either then violating the act, or then attempting to manipulate the market price of any grain. This point is discussed in the light of that interpretation. The necessary implication from the Commission's holding is, of course, that the guilt or innocence of the accused person could lawfully be determined without trial by jury.

It will be noted that Section 9 of the same act declared certain violations to be misdemeanors punishable by a fine not exceeding $10,000, or imprisonment not exceeding a year, or both. *The latter section contemplates a conviction in a criminal proceeding in a district court.* If, therefore, *under the construction contended for,* the violation of cer-

tain of the provisions of the act is a crime under Section 9, how can the same conduct, whenever past offenses are involved, be any the less a crime under Section 6(b)? By declaring in one section, that a forbidden act is a crime, and by not doing so under another section, Congress could not make the same act at once a crime, and not a crime, within the Constitution. The consequence of the Commission's construction is, that for a past act denounced as a crime under Section 9, *which, under the Commission's interpretation, is also cognizable by the peculiar processes of Section 6 (b)*, the violator could be deprived of his right to trial by jury by the mere device of "trying" him under Section 6(b) instead of under Section 9. It is respectfully submitted that the right to trial by jury afforded by the Sixth Amendment is of too serious moment to be either granted or withheld according to the form of the proceedings or the character of the forum before which the proceeding pends. *United States* v. *Athens Armory*, 24 Fed. Cas. No. 14473.

In the case of *Boyd* v. *United States*, 116 U. S. 616, the proceeding was technically civil in form, seeking the forfeiture of goods under a statute which made the forfeiture of such goods part of the penalty for a violation of the statute. This court held that the action was in substance and effect a criminal proceeding and therefore within the constitutional prohibition against compelling any person to be a witness against himself in a criminal proceeding. This holding was followed and approved in *Lees* v. *United States*, 150 U. S. 476.

In the case of *Boyd* v. *United States*, 116 U. S. 616, it is said, at page 635:

> "Though the proceeding in question is divested of many of the aggravating incidents of actual search and seizure, yet, as before said, it contains their substance and essence, and effects their substantial purpose. *It may be that it is the obnoxious thing in its mildest and*

least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be *obsta principiis.* We have no doubt that the legislative body is actuated by the same motives; but the vast accumulation of public business brought before it sometimes prevents it, on a first presentation, from noticing objections which become developed by time and the practical application of the objectionable law." (Italics ours.)

But, it may be suggested, since neither manipulation in fact, nor attempts to manipulate, have been labeled crimes by the provisions of Section 9, therefore the foregoing argument, while sound as to violations specifically treated by Section 9, is not applicable to actual manipulation or to attempts to manipulate. The answer to this argument is obvious. If because of the Commission's construction of Section 6 (b), the section must fall as unconstitutional because of the argument just made, then it must fall altogether, for the structure of the particular provision is such that it could not survive, part valid and part invalid.

Furthermore, the complaint in this case charged a conspiracy to violate the provisions of the Grain Futures Act and a conspiracy having as its objective the manipulation of the market price of grain, and therefore charges acts which are crimes within other statutes of the United States. (U. S. C. A., Title 18, sec. 88; U. S. C. A., Title 15, secs. 1, 2) In respect of the constitutional right to trial by jury, the effect and purpose of the Sixth Amendment cannot be ad-

roitly avoided by selecting an administrative tribunal, and its forms of practice for the statement of and the trial of the criminal charge. (*Boyd* v. *United States,* 116 U. S. 616; *United States* v. *Athens Armory,* 24 Fed. Cas. No. 14473.) The proceeding instituted by the Secretary is clearly one seeking the recovery or infliction of a penalty as a punishment for past offenses. It is not in aid of executive action, or in the nature of an injunction against, future violations. It is strictly and purely a proceeding brought in the public interest, in order to punish the accused. This court said, in the case of *Huntington* v. *Attrill,* 146 U. S. 657, at page 668:

> "The test whether a law is penal, in the strict and primary sense, is whether the wrong sought to be redressed is a wrong to the public, or a wrong to the individual, according to the familiar classification of Blackstone: 'Wrongs are divisible into two sorts or species: *private wrongs* and *public wrongs.* The former are an infringement or privation of the private or civil rights belonging to individuals, considered as individuals; and are thereupon frequently termed *civil injuries:* the latter are a breach and violation of public rights and duties, which affect the whole community, considered as a community; and are distinguished by the harsher appellation of *crimes* and *misdemeanors.*' 3 Bl. Com. 2."

In the case of *United States* v. *Chouteau,* 102 U. S. 603, at page 611, the court said:

> "The term 'penalty' involves the idea of punishment, and its character is not changed by the mode in which it is inflicted, whether by a civil action or a criminal prosecution."

And in the case of *O'Sullivan* v. *Felix,* 233 U. S. 318, at page 324, the court said:

> "The term 'penalty' involves the idea of punishment for the infraction of the law, and is commonly used as including any extraordinary liability to which the law subjects a wrongdoer in favor of the person wronged, not limited to the damages suffered."

Constitutional provisions designed to protect citizens against unjust prosecution may not be avoided by adopting an unusual method of punishment nor by the employment of an unusual method of measuring and providing for the punishment. It is submitted that it is the *nature, extent* and *effect,* and not the particular kind of prescribed punishment, which must determine the character of the offense. In the instant case, respondent was charged, not only with the violation of a public law, but was also accused of conspiring with others to violate a public law of the United States. Upon such allegations a penalty is sought to be imposed which will result in depriving respondent of his liberty of pursuit for the period of two years. The monetary loss to be thus inflicted might well amount to more than the fine of $10,000 provided for under Section 9 in respect of certain specific violations contemplated by that section.

In the case of *Lipke* v. *Lederer,* 259 U. S. 557, at page 562, this court said:

> "And certainly we cannot conclude, in the absence of language admitting of no other construction, that Congress intended that penalties for crime should be enforced through the secret findings and summary action of executive officers. The guarantees of due process of law and trial by jury are not to be forgotten or disregarded."

It is respectfully submitted that Section 6 (b), as construed by the Commission and sought to be enforced by the particular proceeding contemplated herein, would be clearly unconstitutional in that such construction would deprive the petitioner of his right to trial by jury.

Whether this proceeding be regarded as a criminal proceeding, or a civil proceeding to recover a penalty, makes little difference, because if it is the latter, then the proceeding falls under the Seventh Amendment to the Constitution. In compliance with the mandatory requirements of

the Seventh Amendment for the preservation of a jury trial, the courts of the United States have held the following to be common-law actions: (1) Actions by the United States to condemn property for government purposes under the power of eminent domain: *Beatty* v. *United States,* 203 Fed. 620; (2) Actions for triple damage under the Sherman Act for injuries resulting from acts in violation of that act: *Meeker* v. *Lehigh Valley R. Co.* 162 Fed. 354; (3) Forfeiture proceedings pursuant to federal statutes, unless the forfeiture of property to be forfeited was made on navigable waters, and thus within the jurisdiction of the admiralty court, even though the forfeiture proceedings were begun by the customary libel: *United States* v. *Athens Armory,* 24 Fed. Cas. No. 14473; *The Sarah,* 21 U. S. 391; *United States* v. *130 Barrels of Whiskey,* 27 Fed. Cas. No. 15938; (4) Actions to enforce forfeitures in proceedings prosecuting fraud under the Internal Revenue laws: *Garnharts* v. *United States,* 83 U. S. 162; *Shawnee National Bank* v. *United States,* 249 Fed. 583.

DUE PROCESS.

If Section 6 (b) is to be interpreted as contended for by the Commission, then not only is it unconstitutional for the reasons above stated, but it is unconstitutional because the tribunal constituted by the act does not meet other requirements of due process of law. The section authorizes the Secretary of Agriculture, if and whenever he "has reason to believe that any person is violating any of the provisions" of the Act, to serve upon such person a complaint "requiring such person to show cause why an order should not be made directing that all contract markets, until further notice of the Commission, refuse all trading privileges thereon to such person." Thus, it is asserted by petitioners, the Secretary of Agriculture, for any reason that might occur to him, whether it be based upon evidence,

gossip or false rumor, for the purpose of punishment, may place upon the person proceeded against the burden of affirmatively establishing why an order should not be entered against him, which order, if entered, would deprive such person of his right to make contracts, and the right to employ others to make contracts in his behalf, respecting the future delivery of grain. Under the construction contended for by the petitioners, after the Secretary has filed such a complaint stating that he has reason to believe that the person proceeded against has been guilty of a violation of the statute, and has thus prejudged the question of the guilt of such person, and has transferred to the accused the burden and the responsibility of proving his innocence, the Secretary sits as a member of and chairman of the Commission. His appointed referee receives and records the testimony—his counsel prosecutes the action. Under these circumstances it is not unreasonable to assume that the Secretary of Agriculture comes to the hearing with somewhat of a closed mind. If the remaining two members of the Commission divide, the accused may expect nothing but a guilty verdict. We hasten to add that we wish nothing herein asserted to be construed as a criticism of the present Secretary of Agriculture, but the best of officials is not a substitute for law in a country of laws and not of men. This is not a case, as are the cases referred to in the Commission's opinion, where the Secretary, having previously issued a license or permit to some individual or corporation, determined by him as eligible for such license or permit *pursuant to the provisions of the basic legislation,* seeks to bring about the revocation of the permission theretofore granted by him. This is a case where the accused person, being at liberty to enter into transactions, and to employ others to enter into transactions for him, without procuring from any official, any permit or designation of any kind, finds his means of livelihood taken away from

him and a punishment inflicted upon him which might be more grievous than the specific punishment contemplated by other portions of the act.

Tumey v. *Ohio,* 273 U. S. 510, is cited for the proposition that this court has already held that a strong *official* interest (as well as some small pecuniary interest) in the outcome of a trial will disqualify an official from holding the trial. In that case a statute of the State of Ohio had provided that no person should possess any intoxicating liquors. The penalty of a fine and imprisonment was to be assessed against the guilty. The act further provided that any justice of the peace, mayor, municipal or police judge, probate or common pleas judge within the county might have jurisdiction to try the accused. Money arising from fines and forfeited bonds was to be paid, one-half into the state treasury and one-half into the treasury of the township, municipality or county where the prosecution was held, according to whether the officer hearing the case was a township, municipal or county officer. City and village councils were authorized by statute to engage detectives to ferret out violations.

In the *Tumey* case the Village of North College Hill had provided by ordinance that the mayor should receive the amount of his costs in each case, but none were to be paid unless the defendant was convicted. There was no way, therefore, by which the mayor could be paid for his services as a judge if those brought before him were not convicted, nor any way by which the compensation for detectives could be paid unless it was from a fund created from the fines imposed. This court, after considering the cases bearing upon the proposition that the amount of the emolument was remote and trifling, and therefore not of sufficient consequence to constitute lack of due process, held, *not only* that the prospect of emolument from the conviction of the defendant constituted lack of due process, *but also that the*

official interest which the mayor had in the outcome of the trial disqualified him from acting as judge. The court said, at page 534:

> "A situation in which an official perforce occupies two practically and seriously inconsistent positions, one partisan and the other judicial, necessarily involves a lack of due process of law in the trial of defendants charged with crimes before him. * * *".

In the instant case, the Secretary of Agriculture has a strong official interest in the successful outcome of a complaint initiated over his signature—an interest so strong, we submit, that it would not be due process of law for the trial to continue before him, and therefore, to interpret a statute as authorizing such a type of proceeding would be to indulge an unconstitutional construction.

In proceedings brought before administrative tribunals the rules of procedure and the determination of the character and kind of evidence to be received, normally rest entirely with that administrative agency. If the construction contended for by the petitioners were to be upheld in the case at bar, no one can foresee or foretell the limits or extent of administrative power.

THE TERM "MANIPULATE" IS TOO VAGUE TO BECOME THE LAWFUL BASIS FOR A PENALTY.

The law has also declared that it is essential to the validity of penal statutes that such statutes define the interdicted offenses with particularity. This is so that the ordinary individual shall not be required to guess upon the question of whether his conduct is lawful or unlawful. Furthermore, the limits of the penalty for the offense must be definitely fixed by the Congress, since the power to do that cannot be delegated either to the Commission or to the courts.

In the case of *Connally v. General Construction Co.*, 269 U. S. 385, at page 391, this court said:

> "That the terms of a penal statute creating a new

> offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law. *International Harvester Co.* v. *Kentucky*, 234 U. S. 216, 221; *Collins* v. *Kentucky*, 234 U. S. 634, 638."

This rule was applied in the case of *Champlin Refining Co.* v. *Commission*, 286 U. S. 210, already cited in another connection in this argument.

As applied to the instant case, the phrase, "is attempting to manipulate the market price of grain," is subject to the same criticism.

The phrase is too vague and indefinite ever to become the proper foundation for a *penal* statute. Just when is a trader manipulating? Does it make any difference whether he is buying grain, and is a bull, or selling grain, and is a bear? How much grain does a trader have to purchase to be guilty of manipulation? How much does he have to sell in order to be guilty of manipulation? Does it make any difference whether he sells one day and buys the next day or maintains his market position for a few months, a few days, or a few hours? With respect to "attempts" to manipulate, the situation is aggravated. Is *any* attempt a violation, or must the attempt appear to have some probability of success? Is the test of the "attempt" the remote or possible effect—or is it that there must be a clear and present danger? What relationship may there be between the amount of the accused person's trades and the total quantity dealt in? These and other kindred questions spring to mind when the section is employed as stating the basis *for a penal statute*. This evil of indefiniteness and vagueness, while not wholly eliminated, is somewhat les-

sened when the act is used only as the basis for regulation, because if it is sought to be applied to an existing situation or to an existing practice, the trader has at least an opportunity to explain his transactions at the time, and thus to conform to that commission's ideas of what is right and wrong, at the very moment when the criticized conduct is brought to his attention. But certainly if officials are to be permitted to go back into transactions occurring three and four years ago, and charge that such transactions were all in an "attempt to manipulate" and seek to exact a penalty for those transactions, the act must be made specific and certain as to what manipulation or attempting to manipulate means.

We have already cited at page 40 of this argument authorities for the proposition that if a statute be susceptible of two possible constructions, by one of which it is constitutional and the other unconstitutional, that interpretation which will preserve the statute is to be preferred.

The interpretation of Section 6 (b) contended for by the respondent requires the holding *that this particular proceeding herein reviewed does not fall within either the text or the intent of the Grain Futures Act of 1922,* and that therefore the Commission was without jurisdiction to hear and determine the complaint based on the facts of this case. The construction of Section 6 (b) contended for by the Commission is clearly unconstitutional and would vitiate the section entirely. It would be contrary to the text of the statute and to the intent thereof.

If the legislature itself had undertaken to conduct the hearing herein conducted, and to pass an enactment excluding the respondent from the contract markets for the period of two years, such an act would have been a bill of pains and penalties falling within that clause of the Constitution prohibiting such enactments. *Cummings* v. *State of Missouri,* 71 U. S. 277. It is difficult to see how an agency of

Congress could do indirectly, that which the Congress could not do itself.

PETITIONERS' ARGUMENT ANSWERED.

To these contentions of the respondent the petitioners make one answer. It is their contention that the respondent, and all other persons trading on contract markets, are virtually, although not actually, licensed, and that the body of the law, which is usually applied where the revocation of permits and licenses is involved, applies in this case to the respondent and to everyone trading on contract markets.

The extension of the principles referred to, to cases of *unlicensed* individuals is not supported by a single authority, nor do petitioners point to a single sentence in the entire Grain Futures Act of 1922 to fortify the contention that the Congress either intended to license persons using such contract markets or engaging in business thereon, or that the constitutional rights of individual traders should be measured by the same yardstick which measures the rights of the licensed contract markets.

Under the Grain Futures Act as now constituted, there is a marked difference between that bundle of legal rights, constitutional and otherwise, which are possessed by the respective contract markets, and the bundle of legal rights possessed by those whose livelihood is the making of contracts for the future delivery of grain and the employment of others to do so for him. Congress has required that the boards of trade and the markets shall procure a license—it has not yet required licenses from individuals who desire to make contracts thereon. While a licensed market has what may be generally described as a sort of monopoly or franchise from the government, the unlicensed individual trader exercises his rights to invest and to make contracts for the future delivery of grain, in common with all citizens of the land.

This respondent, and any other individual who chooses to engage in the business of making contracts calling for the future delivery of grain, either as principal for his own account, or as an agent for others who desire so to do, may trade upon any contract market without formality of any kind and without prior application for the privilege to any specified government official or agency. The specific scheme of regulation contained in the Grain Futures Act of 1922 embraced the licensing and regulation of the *contract markets* only,—the places where trading in futures takes place, and not the licensing of individuals, brokers or commission houses.

REVOCATION OF THE LICENSE OF THE CONTRACT MARKET AFFECTS RESPONDENT'S CONVENIENCE—NOT HIS RIGHTS.

It is argued by the petitioners, that if the Commission, acting pursuant to Section 6 (a), should revoke the license of the Chicago Board of Trade, respondent and others similarly situated would be without a place wherein to trade, implying that therefore the respondent has only the same *rights* as the contract markets; that because *the contract market* may lose its designation as such without a trial by jury and by order of the authority which granted the designation, the same authority may also without trial by jury, inflict punitive penalties upon those who use the facilities of the contract markets. The argument is extremely far-fetched. If the Chicago Board of Trade, or any other designated market, suffers the revocation of its permit, that would not prevent the respondent and any others similarly situated from trading upon the Kansas City Board of Trade, or the Minneapolis Board of Trade. The individual's right to trade and make contracts in *any other* open contract market still remains; his *convenience* may be affected, but his right is unaltered. Furthermore, the source and the statement of the

respondent's legal rights are not to be found, as is the case of the contract market, within the permit or document executed by the Secretary of Agriculture and the law appertaining thereto under which he was authorized to issue it. *Until Congress* decides to regulate trading in grain futures by requiring individuals and commission men to procure a license before they shall be permitted to make contracts, either as principal or agent, the source of the respondent's right to trial by jury, to a hearing in the courts, and to a fair and impartial tribunal, is to be found in the Constitution and the cases decided thereunder. To say that because persons and individuals are permitted to do business on licensed contract markets, that thereby their rights are to be measured by the limits of that circle which circumscribes the rights of the contract market, is to ignore the circumstance that the Congress has not yet, either directly or impliedly, brought the rights of such persons under control by the licensing method. Whether the statute should be extended to require, that, before trading in grain futures, individuals should procure such a permit, is a profound and important question of *legislative policy*. The decision whether or not, in order to regulate trading in grain futures, individuals and participants in transactions shall be licensed requires the action of the legislative power. It is a matter to be left within and determined by the legislative power. It is submitted that the court cannot, by a process of construction, supply that which the Congress has not yet required.

VARIOUS ARGUMENTS CONSIDERED.

Board of Trade of the City of Chicago v. *Wallace, et al.* 67 Fed. (2d) 402, is cited by petitioners (p. 115) as authority for the proposition that, as Section 6 (b) is construed by the Secretary and the Commission, the proceeding against respondent is not a criminal proceeding. The

proceeding reviewed in the case of *Board of Trade of the City of Chicago* v. *Wallace* involved the question of whether or not the license issued by the Secretary of Agriculture to the contract market should be revoked because of the failure of said contract market to comply with other pertinent provisions of the Grain Futures Act. There, as the court properly held, the proceeding was for the revocation of a license or permit, and the court was concerned solely with the question of whether or not the Chicago Board of Trade had complied with the terms upon which its designation had been issued.

Petitioners, at page 108 of their argument, say: "Respondent contends that a person may not constitutionally be suspended on account of past actions." Respondent has made no such broad contention. Respondent contends that *unlicensed* persons cannot be barred from trading on account of past conduct under this statute, where it is apparent that there is no regulatory function being discharged.

An extract is cited (Br. p. 108) from the provisions of the Packers and Stockyards Act, wherein the Secretary of Agriculture is authorized to suspend a registration for a reasonable, specified period. The reference does not fortify petitioners' contentions in this case, but on the contrary indicates that under said act a specific provision is made for the licensing of commission merchants, dealers or brokers, as the case may be. It is significant that the original Packers and Stockyards Act of 1921, which contemplated the issuance of licenses, was considered by the same committee and the same Congress that enacted the Future Trading Act. Both acts were in a measure pioneer legislation, and in one, the Congress required licenses from commission merchants, and in the other it did not.

To support the contention that a jury trial is not required by law, petitioners cite the cases of—

Farmers Livestock Commission Co. v. *U. S.* 54 Fed. (2d) 375.

Hall v. *Geiger-Jones Co.* 242 U. S. 539.

Redmond & Co. v. *Michigan Securities Comm.* 222 Mich. 1, 192 N. W. 688.

People ex rel: Presmeyer v. *Commissioner of Police,* 59 N. Y. 92.

Voight v. *Board of Excise Commissioners,* 59 N. J. L. 358, 36 Atl. 686.

Cherry v. *The Commonwealth,* 78 Va. 375.

Lyman v. *Erie County Athletic Club,* 46 App. Div. 387, 61 N. Y. Supp. 884; Aff'd 163 N. Y. 552.

Premier Cereal and Beverage Co. v. *Pennsylvania Alcohol Permit Board,* 292 Pa. 127, 140 Atl. 858.

In re Smith, 10 Wend. (N. Y.) 449.

Munk v. *Frink,* 81 Nebr. 631, 116 N. W. 525.

State v. *Hanson,* 201 Iowa 579, 207 N. W. 769.

State Board of Medical Examiners v. *Macy,* 92 Wash. 614, 159 Pac. 801.

State v. *Armeno,* 29 R. I. 431, 72 Atl. 216.

Gregory v. *Hecke,* 73 Calif. App. 268, 238 Pac. 787.

Morley v. *Police Commissioner of Boston,* 261 Mass. 269, 159 N. E. 41; cert. den. 276 U. S. 625.

United States Industrial Alcohol Co. v. *Blair,* 6 F. (2d) 658, 660.

Caserta v. *Mills,* 28 F. (2d) 637, 638.

John Low v. *Commissioners of Pilotage,* R. M. Charlton Repts. (Ga. 1830) 302.

La Croix v. *County Commissioners,* 50 Conn. 321.

Since the Congress thus far has only undertaken to regulate trading in grain futures by regulating and licensing the markets or boards of trade where individuals make contracts—and has not thus far undertaken to regulate trading

in grain futures by drawing the individual traders within the scope of licensing provisions, it is submitted that the above cases are not applicable to this case. In all of the foregoing cases the courts were concerned with actions contemplating the revocation of specific permits which had been theretofore granted pursuant to some basic statute. This is all that is said by petitioners in respect of a jury trial. No answer is made to the proposition—raised by respondent in the court below—that, under Section 9 certain things are made misdemeanors, and that the Commission contends, even in respect of such matters so made crimes, it may inflict the penalty of suspension without a trial by jury.

In all of the wealth of adjudicated cases dealing with reviews of the actions of administrative tribunals and the place of such agencies in the American scheme of law, but one case appears to have upheld the theory that under a law an executive agency or department might inflict a penalty. That case, cited but not discussed by petitioners, is *Oceanic Steam Navigation Co.* v. *Stranahan*, 214 U. S. 320. In that case a statute was upheld which authorized the Collector of Customs to impose a fine upon a steamship company for bringing in aliens afflicted with a loathsome disease and authorized the Collector of Customs to withhold clearance papers from the master of the vessel until the fine was paid. The decision is supportable upon a number of grounds, namely, that the amount of the fine involved is small, and the case arose in respect of the right to regulate foreign commerce, over which the Congress has an *absolute* power. Furthermore, the necessity for expedient action in such cases was a matter for consideration.

In respect to the proposition that petitioners' construction would not be consistent with due process of law because it would authorize the complainant to sit as a judge

in his own case, petitioners cite in reply the case of *Farmers' Livestock Commission Co.* v. *United States,* 54 Fed. (2d) 375. There again the court was concerned with a proceeding involving the revocation of a license as such, and not the infliction of a punitive penalty as such. It is, of course, well settled law, when dealing with the question of the revocation of licenses, that the administrative officer or agent which granted the license, or some other agency designated by the basic law, may conduct the hearing involving the propriety of its revocation. "The Lord giveth—The Lord taketh away." But that is not true of the liberty of contract to trade in grain futures. Before the activities of individuals desiring to engage in the business of making contracts for the future delivery of grain are to be brought within the functions of a license, the Congress must determine whether the activities of individuals, in the various cities and states of the United States, are of such moment, or whether they constitute in the main, such threat to the licensed contract markets and to interstate commerce, that such individuals should be required to submit themselves to the examination and scrutiny of licensing officials before permission to trade is granted or may be revoked. This phase of the question involves, first, a determination of legislative policy before the courts may be asked to pass upon the question.

In reply to respondent's contention that the phrase, "is attempting to manipulate the market price of grain," is too vague and indefinite to be the lawful basis for the imposition of a penalty, petitioners contend, *first,* that the order in this case does not depend for its validity upon the finding that the respondent attempted to manipulate the market price of grain, and *further* contend that the respondent's argument with respect to the definiteness of the standard is without merit; citing in support thereof the cases of *Bartlett-Frazier Co.* v. *Hyde,* 65 Fed. (2d) 350,

354; cert. den 290 U. S. 654, and *Board of Trade* v. *Olsen,* 262 U. S. 1, 39-40. The answer to petitioners' contention is, that they have failed to appreciate the difference between the use of the word "manipulation" when used as stating the basis for the necessity of regulation, and the use of the phrases, "manipulate" and "attempt to manipulate" *as the basis for the exaction of a penalty.* It is submitted that in the case of *Board of Trade* v. *Olsen,* 262 U. S. 1, the court was merely *recognizing* and describing a practice by its common term, and sustained the validity of the act as designed for the treatment of the prevention of that general problem, but that is quite apart from the use of either of the criticized phrases *as the basis for the infliction of a penalty.* In the case at bar, the accused is being deprived of his freedom of contract and his right to earn a livelihood, for having violated, according to the Commission, some vague and indefinite standard which will change, apparently, from one commission to another. In the case of the respondent, it is not even manipulation, for it was conceded very early in the case that the accused did not manipulate the market; in this case the order is based entirely upon a concept of "attempted manipulation" which is even less susceptible of exact definition. What conduct constitutes an attempt under the Grain Futures Act? Is *any* attempt a violation, or must the attempt appear to have some probability of success? Is the test the remote or possible effect—or is it that there must be some clear and present danger? Generally speaking, in the field of criminal law, to constitute an indictable attempt there must be at least an apparent ability to commit it, and if the means employed are so clearly ineffectual that it is obvious that the crime cannot be committed the attempt is not indictable. It is respectfully submitted that if Section 6 (b) is to be construed as authorizing the infliction of the penalty of suspension upon individual traders for having

attempted to manipulate three and four years prior to the proceedings, the act must first be made specific and certain as to what manipulation or attempted manipulation means, and furthermore, the limits of the penalty for the offense must be definitely fixed by the Congress. Until that is done the statute, as construed by the Commission, is unconstitutional.

In respect of the contention that the order in this case does not *depend* for its validity upon the finding that the respondent attempted to manipulate the market price of grain, respondent answers that it is upon the charge that the respondent attempted to manipulate the market during 1930 and 1931 that the Commission acted, and the order so finds (R. top of p. 464). The Commission did not see fit to base its order solely on the failure to file reports in 1930, or solely on the failure to file reports in 1931. These were merely the evidentiary facts on which it reached the conclusion of ultimate fact, namely, that the respondent had attempted to manipulate the market price of grain. Furthermore, as we have pointed out, it is the theory of the act, and has been the practice since the act was in effect, to require the governing board of the board of trade to bring about compliance with the reporting requirements or suffer the consequences of the loss of its designation as such.

III.

THE CONCLUSION THAT RESPONDENT ATTEMPTED TO MANIPULATE THE MARKET PRICE OF WHEAT DURING THE YEARS 1930 AND 1931 IS NOT SUPPORTED BY THE WEIGHT OF EVIDENCE.

In the consideration of the factual side of this proceeding the charge that the respondent "conspired and colluded with various persons and grain firms of the Board of Trade to conceal his trading and position in the market from the

Grain Futures Administration" (R. 11, par. 3) may be eliminated. It was vigorously and emphatically denied by the representatives of the grain houses who testified, was not supported by any evidence, and is not dealt with in the Commission findings.

Another inference from the averments of the complaint —not directly alleged—was that the respondent *actually manipulated* the market price of wheat downward during 1930 and 1931. Certain of the paragraphs of the complaint (R. 24-25) ingeniously grouped and set off price declines in wheat during 1930 and 1931, against the statement of certain transactions, thus inferring that respondent's transactions brought about the change.

However, at the beginning of the hearing, counsel for the secretary stated to the referee that the secretary did not charge Mr. Cutten with having actually manipulated the market—and the Commission's opinion holds (R. 464):

> "Respondent is not charged with having manipulated prices and the proof does not establish that he caused the decline of 78 cents per bushel in the price of wheat which occurred between January 2, 1930 and December 31, 1931."

Aside from the paucity of evidence in support of the inference, this finding was no doubt prompted by the fact, now of common knowledge, that no human agency was able to resist the decline in prices of all commodities that prevailed throughout the years of 1930 and 1931. It is pretty well established that the waves of liquidation that have engulfed the various commercial countries of the globe have been of a character to defy the resourcefulness of any one man or group of men. Nations have resisted national collapse in a spirit of desperation, yet the respondent, with forty years of market activity behind him, is found guilty of having disregarded these national and world-wide manifestations, and *having attempted* to artificially manipulate the price of wheat in the face of forces that have defied the

ingenuity of economists and statesmen. The Commission reached its conclusion of fact primarily from the finding that no reports were filed in 1930, and from the finding that incorrect and allegedly false reports were filed in 1931. These two circumstances represent the preliminary facts upon which the Commission rested its conclusion. It is this conclusion upon which the order of suspension is founded. It is not the failure to file reports, *per se,* that resulted in the order of suspension—nor is it, *per se,* the filing of false or incorrect reports. It is the conclusion that (R. 465) "respondent's purpose in concealing his position in the market was to manipulate the price of grain and thereby to make large profits." Since the provisions of Section 6 (b) are directed at manipulation, this conclusion was necessary in order to bring the holding with respect to the default, within the scope of that section. With the Commission's statement that during 1930 and 1931 the respondent entered into transactions for profit we will not differ—but that respondent attempted to manipulate the market price of wheat is a conclusion not supported by *any* evidence, much less by the *weight of evidence.*

First, with respect to the failure to file reports in 1930. In considering the respondent's activities during the two years singled out by the complaint, some regard must be had to the respondent's business background and history. It is alleged in his petition to the Circuit Court of Appeals (R. 3) that for forty years he has pursued the business and occupation of grain trader. There is ample evidence in the record from witnesses that his forty years of business endeavor have been free from any untoward accusations of any character. (R. 48, 114.) The business in which the respondent and the others who testified were engaged is peculiarly a business that depends upon the word of its participants for the faithful execution of orders and trans-

actions. Those who remain in it for long periods of years are men whose word has come to be regarded as reliable, and whose judgment and business acumen survive the test of the market place. Other agencies of society may differ with respect to the commercial usefulness of boards of trade and stock exchanges, but the fact remains that in so far as the particular activities of the participants are concerned, these are businesses wherein tremendous values pass from hand to hand on the strength of the spoken word. Such circumstances, while by *no means of controlling or conclusive importance,* do furnish some indication of the character of those who engage in the business.

Richard H. Uhlmann, of Uhlmann & Co., (one of the commission houses) testified (R. 51) that during 1921 he worked for Jackson Bros., another one of the grain commission houses of Chicago, and that Mr. Cutten had traded heavily at that time. This witness testified that in 1921 Mr. Cutten frequently traded in over 500,000 bushels; *he frequently* traded for others, and the witness further testified that he "knew of certain accounts for whom he traded, although they were numbered accounts." (R. 51.) *Mr. Cutten's system of trading during 1930 and 1931 was no different than it was in 1921.* He traded in his own account, said this witness, and probably directed a dozen accounts for others. These accounts were carried by grain houses under symbols and numerals in 1921, just as they were in 1930 and in 1931. There was therefore nothing novel about Mr. Cutten's method of doing business, *nor was there anything unusual in 1930 and 1931 with respect to his having a number of accounts.* The Grain Futures Administration itself has recognized the necessity of secrecy with respect to the activities of traders by assigning code numbers to them and having them report thereunder.

Reference has been made in the Commission's opinion and finding and reiterated in the statement of the case

to the effect that respondent "split his trade into thirty-five accounts." (R. 464, Finding No. 5.) The fact is apparent from all the testimony in the record that these accounts were not "split" during 1930 and 1931 for any purpose peculiar to those years. *These accounts were accounts which had been maintained for a number of years with all of the commission firms involved.*

Some of these accounts were admittedly those of Mr. Cutten.

Others were those for Mrs. Cutten.

Still others were those for his brother.

Some of the accounts were in the names of friends. Some of these accounts he guaranteed.

Some of respondent's accounts were guaranteed by his brother.

The reporting requirements first went into effect early *in 1926.*

On February 6, 1926, Mr. L. A. Fitz, then and now in charge of the Chicago office of the Grain Futures dministration, sent Mr. Cutten a letter requesting him to make reports (R. 130).

During 1926 and 1927, reports were duly received from Mr. Cutten's office without criticism. (R. 131.)

In 1927, the reporting requirements were suspended, and the Chicago office of the Grain Futures Administration duly advised Mr. Cutten, in writing, of that fact (R. 133).

In November of 1927, the reporting requirements were reinstated, and again the Chicago office of the Grain Futures Administration duly advised Mr. Cutten of that fact (R. 133). Mr. Fitz admitted on cross-examination (R. 141):

> "I am taking the position that Mr. Cutten did not comply. *Never have I made a request of them and in turn had from them a refusal to comply.*"

In October of 1932, the reporting requirements were again suspended, and remained suspended until July of 1933, and again Mr. Cutten was duly advised (R. 178). Mr. Fitz, in testifying with respect to the 1932 suspension order, said (R. 178):

> "This is a notice to Mr. Cutten that the reporting requirements affecting his holdings were suspended. This constitutes a suspension order. This did not go to all board members. I say that for the reason that in the membership of the Board of Trade there are officials of banks and members of railroads and others, *but it went to everybody that was active in the grain business, that we had been in contact with and who had been reporting to us.*" (Italics ours.)

It will be noted, therefore, that the Chicago office of the Grain Futures Administration had itself established the *practice* of notifying those reporting to it of changes in the reporting requirements. It notified respondent when the regulations went into effect—it notified him when they were suspended. (R. 178.) On prior occasions, it had notified him when reports were not coming in promptly, but the entire year of 1930 passed and no complaint was made by the Supervisor for the Grain Futures Administration in Chicago, to Mr. Cutten. Nor was this mere oversight. Mr. Cutten traded in the market throughout 1930. The Chicago office of the Grain Futures Administration knew of this activity (R. 149, 170.) During the month of February, 1930, reports evidencing Mr. Cutten's activities were made to the Chicago office of the Grain Futures Administration by Clement, Curtis & Co. and by James Kidston & Co. (R. 149, 150, 151.) These reports show numerous days that have accounts in excess of 500,000 bushels (R. 149) and some of 1,000,000 bushels (R. 170). The Chicago Supervisor admitted on cross-examination (R. 149) that he was put on notice that Mr. Cutten had failed to comply with the reporting requirements.

This situation prevailed during the months of March, April, May, June, July and August of 1930. (R. 170.)

At this point we desire to correct a statement made on page 50 of Petitioners' Brief. It is there said:

> "Not only did respondent himself fail to report his transactions and net open position when they were of sufficient volume to bring him within the reporting requirement, but the firms with which he carried accounts also failed to make reports of his transactions although required to do so by the lawful regulations."

This is an incorrect and misleading statement for the fact is, as will appear from the record (R. 149), the various grain firms did report, but, in accordance with the common understanding among such houses (which we shall have occasion hereinafter to discuss and justify), did not, during these years combine the accounts and report such accounts as a unit. The commission houses did report holdings of the respondent in excess of one million bushels at times when no reports were being received from respondent. (R. 170.)

It is submitted that in 1930 the Grain Futures Administration was fully informed of the reporting delinquencies which, it is now contended, required more than two years to discover. (R. 170.)

Mr. Fitz testified (R. 153):

> "I feel quite sure that we discussed the situation as a whole during the year 1930, and it is quite true that undoubtedly we did discuss whether or not we were getting an individual report from Mr. Cutten. The discussions are nearly always had with Dr. Duvel; because he is the Chief. We did not, during 1930, prior to the last day of April, 1930, discuss the alleged violations of Mr. Cutten in connection with these accounts on which these grain houses had reported from a violation standpoint. I believe that I had told Dr. Duvel, during this time, in reply to his discussion of the market situation, that we were not at this particular time getting a report from Mr. Cutten."

On another occasion he testified (R. 173):

> "In 1930 I had enough information, regarding these Cutten accounts, to cause me to say that they constituted a serious infraction of the law, in violation of the regulation issued under the law, I account for the fact that a serious infraction of the law, known to me and known to my chiefs in Washington, was permitted to go unpunished from 1930 until 1934 because we didn't know of the seriousness of the infraction in 1930."

If, as the Commission holds, respondent was then attempting to manipulate the market, and was attempting to conceal his position in the market by the failure to file reports, then he effectively created a circumstance that should have led to prompt inquiry.

The statement that the exchange of telegrams between Secretary of Agriculture Hyde and respondent during February of 1930 "shows that respondent was deliberately concealing his market transactions" (Pet. Br. p. 34), is vigorously denied.

To understand respondent's telegram, it must be appreciated that traders omit the last three ciphers in speaking of quantities. The telegram, therefore, advised that respondent's activity for the two weeks preceding, consisted of selling about 400,000 bushels in privileges, each way, and that during that time he had not sold wheat except to protect trades put to him as the result of transactions in privileges. The net effect of trading in *all accounts* in the May 1930 future between the dates of February 13, 1930 and February 25, 1930, both inclusive, was to increase respondent's short position by only 100,000 bushels; the net effect of respondent's trading in the July future for the same period, was to buy 495,000 bushels more than were sold. (R. 401.) Activity of such character for one of respondent's known reputation is of absolutely no importance in a grain market. The aggregate *short position* of which petitioners speak (p. 35) is, of course, the result of *all* transactions

from the first of that year, and in *all accounts*. Petitioners do not refer to the combined holdings in August of 1930 in the December future when all the accounts were *long*, approximately four million bushels of wheat. (R. 405.)

Finally, when the figures which have been prepared by the statisticians for the Secretary of Agriculture are examined, it becomes readily apparent how strained the charge of "attempted" manipulation appears. There was offered in evidence at the hearing, and is printed at pages 400 to 419 of the transcript of record, an exhibit called "Complainant's Exhibit 411." This exhibit was prepared by accountants for the Secretary by taking the records of Mr. Cutten's accounts, Mrs. Cutten's accounts, R. J. Cutten's accounts—*all accounts* with *all houses*, and assimilating them into one huge chart. It deals with the condition of the combined accounts for each day during the years 1930 and 1931. It will be recalled that Mr. Fitz testified that a "dangerous position" (which is one normally spurring his official activity) was five million bushels *in any one future* (R. 170), not all futures combined. Assuming for the moment, the validity of the test, it may be applied here for the purpose of determining whether or not during this period of 1930 these accounts ever reached a point which, it may be assumed, respondent was attempting to conceal, or, a point which would have any vital influence on the market price of grain. Referring to Complainant's Exhibit 411, and in particular to page 404 of the transcript of record, it will be noted that the total holdings—in all accounts—and in all futures—reached its maximum in 1930, on June 25, 1930. On this date the total holding in *all futures* in *all accounts* was 7,725,000 bushels. This is split into three futures, 400,000 bushels in the July option, 3,675,000 bushels in the September option, and 3,650,000 bushels in the December option. The record discloses that this position was maintained for a very short time, and

from this date in June until the close of the year 1930, the volume of the transactions and the total holdings were very much less. Therefore, this exhibit discloses that at no time during the year 1930 did the total holdings in *all the accounts, in any one future,* ever reach that point which Mr. Fitz has characterized as a dangerous position. We respectfully submit, therefore, that there was no motive for concealment, because, treating *all the accounts on a combined basis,* the respondent had nothing to conceal.

There is still another circumstance which must be considered in connection with the Commission's conclusion that respondent attempted to manipulate the market price of grain during this period. When, in 1930, the price of wheat began to recede, there was created under the sponsorship of the United States a corporation known as the Grain Stabilization Corporation. Its purpose was, as its name implies, a quasi-governmental agency to stabilize the price of wheat. The detailed activities of this corporation were not available in public form, at the hearing, but Secretary of the Treasury Morgenthau, in 1933, did make known some statistics with reference to the activities of this corporation. According to a public pronouncement made in 1933 (R. 177), the total purchases of the Grain Stabilization Corporation, beginning in May 1930 and continuing to March 3, 1933, amounted to 370,278,449 bushels of cash wheat, and 538,337,000 bushels of wheat futures, or a total of 908,615,449 bushels. The corporation's peak holdings of cash wheat was reached on June 30, 1931, on which date the corporation held 257,136,571 bushels of cash wheat, no futures being held on that date. It is fair to assume, therefore, that throughout the year 1930 the activities of this Grain Stabilization Corporation were of such magnitude and character that respondent's relatively minor activities could have had no effect upon the market. We respectfully submit, therefore, that so far as the year 1930 is concerned,

there is no evidence in the record tending to support the charge that respondent attempted to manipulate the market price of grain, and the conclusion does not logically follow merely from the fact that no reports were filed during that period.

No communication of any kind was received by Mr. Cutten's office from the Chicago office of the Grain Futures Administration between the dates of November 4, 1927 and January 6, 1931.

On January 6, 1931, the Grain Exchange Supervisor at Chicago, sent a letter to Mr. Cutten calling upon respondent to report his Chicago grain futures transactions beginning as of the close of business January 5, 1931 (R. 444). This was a routine letter for it advised Mr. Cutten of his reporting number, and indicated that blanks for rendering reports, as well as a set of instructions and a dummy report sheet to illustrate the manner in which reports were to be made out, were enclosed. *This was the first communication in over three years.* An immediate response was forthcoming, for there appears in evidence (R. 134 and 444) an exhibit showing that the Chicago office of the Grain Futures Administration received, under date of January 7, 1931, a report showing a transaction and open interest in July wheat. The Chicago office of the Grain Futures Administration called attention to the error by a letter, which went on to say: "Apparently you have misunderstood the meaning of this call for report and have simply reported on the one grain and future in which you made a transaction on January 7th. This call was made for complete report upon your Chicago grain futures transactions and at that time our records show that you had open interests in other grain than the July wheat.*

*Significant as negativing petitioners' contention that respondent could conceal his position from the Grain Futures Administration. It knew instantly from its records (reports from brokerage house with which Mr. Cutten dealt) that respondent had a position in July wheat different from that indicated in the report of a single day's transactions.

Will you kindly send a corrected report for January 7th and keep in mind the requirement regarding additional reports." The consequence was, that during the year 1931 reports were made by Mr. Cutten's office from time to time. These reports were made out by a young lady in Mr. Cutten's office who had succeeded the gentleman who had made out the reports for earlier years (R. 154, 166, 167). The Commission's complaint with respect to such reports as were filed during 1931 is that they were deliberately false because *all* of the accounts were not combined and reported as a unit.

As a matter of fact, this method of reporting was in accordance with the then prevailing impression among the grain commission houses in Chicago, namely, that the regulations did not require that the accounts be *combined and reported,* but merely that whenever a particular account reached 500,000 bushels that particular account was to be reported. If we refer to the testimony of Mr. Arthur F. Lindley, of the firm of Clement, Curtis & Co. (R. 111), it will be seen that he said:

> "In 1930 and 1931 our firm reported on all accounts in our office of this group that have been introduced in evidence, *the Cutten accounts, where an individual account exceeded 500,000 bushels in any one future in any one grain. We did not report as a combined group. These accounts were not probably considered by us as under the ownership of one person. I looked to the account of Maude Cutten as her individual property.* It is not uncommon in the custom and practice of our business, that a man may guarantee an account, may furnish the margin for that account, and at the same time give the orders for the transactions in that account, and still the property interest, the ownership of that account be in a third person, or be in another person. To illustrate: If, prior to July of last year, I were to open an account in the name of my wife, and if I furnished the margin and guaranteed the account and handled the trades in that account, our firm would consider that to be an individual account of my wife

and in no way coupled with my account, if I had an account. I doubt if we would treat it that way now [1934]. We have since been put on notice that a control account—and I have not yet found out what that word 'control account' means from a legal standpoint—but I think since the summer of last year we would probably inquire whether the account should not be reported because controlled by another individual, if that other individual also had another interest. I think the regulation was made prior to 1933, but they came to my attention in 1933."

An examination of the "General Rules and Regulations for carrying out the provisions of The Grain Futures Act of September 21, 1922 with respect to contract markets" (R. 433-439) would indicate that there was considerable justification for the confusion in the minds of the representatives of the grain firms. Most, if not all, of the grain firms with which Mr. Cutten carried accounts were so-called clearing members, that is to say, they belonged to the Chicago Board of Trade Clearing Corporation. The original Rules and Regulations issued under date of June 22, 1923, provided that there should be a report by or for each clearing member which should include all contracts of sale of grain for future delivery made on or subject to the rules of the contract market to which such clearing member was a party either by way of seller or buyer. Such report was to show (1) the net position at the beginning of the period covered by the report, (2) the quantity of grain purchased and the quantity of grain sold, (3) the quantity of grain delivered and the quantity of grain received on contracts during the period covered by the report, (4) the net position at the end of the period covered by the report and (5) the aggregate of all long and the aggregate of all short accounts at the end of the period covered by the report by the clearing member for whom the report is made.

The regulations then went on to provide (R. 435, subparagraph (f)) that the report should show: "the net

position at the end of the period covered by the report *of each* **separate account** *carried by such clearing member when such net position equals or exceeds such amount as shall be specified in a written notice from time to time by the Grain Futures Administration to such contract market.''* It will be noted, therefore, that in these original regulations promulgated under date of June 22, 1923, the emphasis was *on each separate account.*

The new regulations contemplating reports from *individual members* were promulgated under date of January 20, 1926. (R. 437-438.) As of that date there was inserted at the end of Subdivision (f) of Section 2 of the original Rules and Regulations the provisions whereby both members of contract markets and nonmembers were required to report, *but no subsequent amendment of any kind has clarified the words ''each separate account'' appearing in the original Subdivision (f) as set forth on page 435 of the record.* Therefore there would seem to be justifiable confusion in the minds of the representatives of the grain houses as to whether or not they should or should not combine accounts and then report the accounts on a combined basis.

Virtually all of the witnesses testified that auditors and representatives of the Chicago office of the Grain Futures Administration went through the books of the firms during the year 1930 and 1931, looked into these accounts (R. 59, 75, 87, 98, 106) and that at no time were any suggestions or changes made with respect to the method of reporting them.

With respect to the Regulations as amended, and their applicability to the respondent's situation, no definition of the word ''control'' is given in the Regulations, and the Chicago supervisor admitted on cross-examination (R. 173) that there might be a reasonable difference in opinion among individuals with respect to whether or not certain

types of accounts were within the meaning of the word "control." The right of the secretary to combine *all of the accounts* and unjustifiably enlarge the figures, is disputed because no definition is given by the regulations to the word "control." Does the word mean control of the trading judgment to be exercised in respect of purchases and sales, or does it mean control of profits or losses, as the case may be?

Reference is made in the opinion of the Commission (R. 463) to the fact that the accounts frequently reflected holdings in the amount of 490,000 or 495,000 bushels. This amount is no more indicative of concealment than holdings of 200,000 or 250,000 bushels, which are much more frequent. The figures themselves merely reflect the widespread view that reporting requirements were founded on an *individual account* basis.

A vast array of figures combining *all accounts and all futures* was prepared by accountants from the Grain Futures Administration but notwithstanding all the data at its command the Administration did not offer any testimony showing *the total volume* of trading in the market *on the respective dates* on which the respondent was active, in order that a fair comparison could be made; nor did the Administration offer any testimony disclosing or tending to disclose the total volume of wheat marketed during the criticized period. One cannot tell, therefore, whether or not this so-called "attempt" to manipulate constituted any real or present threat. It is only fair to assume in the light of what has been said with respect to the activities of the Grain Stabilization Corporation, and in the absence of any figures tending to show the total number of bushels traded in on each trading day, that the activities of the respondent were merely routine and had absolutely no effect upon the market price of wheat.

The Chicago office of the Grain Futures Administration waived the necessity of filing corrected reports back of the date of November 30, 1931, by a letter written to respondent on March 15, 1932. (R. 445.) The letter reads:

UNITED STATES DEPARTMENT OF AGRICULTURE

Grain Futures Administration,
Chicago, Illinois.

Field Office: MARCH 15, 1932.
Room 906, 332 So. LaSalle St.
Mr. A. W. Cutten,
231 South La Salle Street,
Chicago, Illinois.

DEAR SIR:

It has come to our knowledge that you have failed to comply with our reporting requirements as provided in the regulations issued by the Secretary of Agriculture which read as follows:

"Whenever any member carries or has under his control more than one account with any clearing member of a contract market, and the total volume of such accounts is equal to or in excess of the amount fixed in accordance with subdivision (f) of section 2 of these rules and regulations, then the total long and the total short position of all such accounts shall be reported and the names of all persons interested in such accounts shall be furnished to the supervisor in charge.

"Whenever a member has under his control an amount of wheat, corn, oats, barley, rye, flax, or sorghum equaling or exceeding the amount fixed in accordance with subdivision (f) of section 2 of these rules and regulations, and files for execution an order for the purchase or sale of any grain future, such individual shall report that day to the Grain Futures Administration his total long and/or total short positions in the several futures in that grain in the market.

"Each contract market shall make, or cause to be made, by its nonclearing members reports showing all or such part of the facts required to be shown by or for clearing members as the Grain Futures Administration shall from time to time specify."

Your attention was directed to this matter by our letters of January 6, 1931 and January 15, 1931. Ex-

amination of records disclosed the fact that there have been many days during the past year when your reports were due but were not made in accordance with the regulations.

You are hereby called upon to render reports in compliance with the regulations quoted herein beginning, *for the present, with the close of business November 30, 1931.* Be sure to include in such reports each and every account in which you have an interest in the open contracts or over which you exercise *any direction* or control. Kindly see to it that these back reports reach us promptly and that current reports come forward each day they are due.

Very truly yours,

(Signed) L. A. FITZ,
Grain Exchange Supervisor.

LAF:LE

(Italics ours.)

We respectfully direct the court's attention to the words "for the present" in the next to the last paragraph of the letter. The words "any direction" were used for the first time, in any regulation. At that time, although apparently in full possession of the facts, the Chicago office did not ask the respondent to make corrected reports back of the date of November 30, 1931. These reports were duly filed. (R. 167.)

Petitioners have referred to the fact that an "investigation" lasting from November of 1931 to April, 1934, was required to "uncover" respondent's transactions. When respondent was asked to file reports beginning with the date of November 30, 1931, he responded. There is no evidence in this record that the respondent was ever requested by petitioners to supply the information which it is now asserted it took them three years to obtain.

Finally, the charge of "attempted" manipulation, relied upon by the Commission as the basis for its expulsion order, is completely exploded when some analysis is made of some particular price movements of grain in relation to specific transactions of the petitioner. For instance, in paragraph

45 of the complaint (R. 24) there is contained an allegation that the respondent was long wheat on April 10, 1930, in the amount of 1,800,000 bushels. (This is in all accounts and in all futures.) Between April 10, 1930 and April 26, 1930, it is alleged that the respondent sold wheat futures aggregating 3,210,000 bushels, thus reversing the long position and attaining a short position of 1,410,000 bushels. On April 10, 1930, the beginning of the alleged period, the closing price of May wheat future on the Board of Trade was $1.14\frac{1}{8}$ and on April 26, 1930, the closing price of the particular future was $1.02\frac{1}{8}$—a decline of 12 cents per bushel. Although the allegation is not stated, we assume that this particular paragraph was put into the complaint in order to give the impression that the respondent's transactions were inimical to the public weal, and although not stated, the inference is that there is some relationship between respondent's transactions and the decline in the price of wheat. If reference is made to Exhibit 411, with particular reference to page 402 of the transcript of the record, we note that during the criticized period Mr. Cutten's activities in May 1930 options were virtually none. He did have transactions (treating all accounts combined), in the July 1930 future. On April 16, 1930, the *combined accounts* sold 1,500,000 bushels of the July option. According to page 72 of Statistical Bulletin No. 41 of the United States Department of Agriculture (which is a voluminous document not printed in the transcript of record but which, under the stipulation of the parties may be referred to for purposes of argument) the market price of the 1930 July future jumped $2\frac{1}{4}$ cents on April 16, 1930. On April 19, 1930, according to Complainant's Exhibit 411 (R. 403), the combined accounts *bought* 1,090,000 bushels of the 1930 July future, and on that date the price *declined* $1\frac{3}{4}$ cents. On April 23, 1930, the combined accounts *sold* 500,000 bushels of 1930 July wheat future, and on that date the price went

up 1⅝ cents, so that so far as the respondent's particular activities are concerned there seemed to be absolutely no relationship between his particular activities and the market price of grain.

Paragraph 47 of the complaint (R. 28) charged that on November 12, 1931, respondent was *long* 2,845,000 bushels in wheat futures. The complaint alleged that between the dates of November 12 and November 27, 1931, the accounts sold wheat futures aggregating 6,805,000 bushels, thus reversing the long position and attaining a short position of 3,960,000 bushels. On November 12, 1931, the price of the December future was 61¼ cents. On November 27, 1931, the closing price of the future was 52⅝ cents—a decline of approximately 8 cents per bushel, and of course the inference from the paragraph and with respect to which some testimony was offered (R. 254), is that this "coincidence" as it was called by the Secretary's counsel, was brought about by Mr. Cutten's activities, and the inference sought to be conveyed is that this decline in the price of 8 cents during the period set forth was Mr. Cutten's responsibility. By reference to page 418 of the transcript it will be seen, treating the accounts on a combined basis, that Mr. Cutten's first sales of May 1932 wheat took place on November 13, 1931, and another substantial sale was made on November 14, 1931. We have examined page 66 of Statistical Bulletin No. 41 issued by the United States Department of Agriculture, Table No. 28, and we find that the price of the 1932 May future declined 3 cents on November 10th and 2⅜ cents on November 12th, so that on November 13th when Mr. Cutten started to sell and to change his long position to a short position the price had *already* declined 5⅜ cents! Obviously, if Mr. Cutten was long 1932 May wheat on November 12, 1931, that would indicate that he was holding that wheat for a future rise in the price thereof. Manifestly his sales during the period from November 13, 1931 to November 27, 1931, were

merely sales in which he was trying to protect himself against loss. The fact of the matter is that Mr. Cutten's activities during the period had absolutely nothing to do with the market price of the grain.

It is respectfully submitted that the weight of the evidence does not sustain the finding that the respondent attempted to manipulate the market price of grain.

CONCLUSION.

The respondent respectfully submits that the complaint in the case at bar was not initiated in accordance with either the letter or the intent of the Grain Futures Act of 1922, that the Commission did not have jurisdiction to hear and determine the allegations thereof, and that therefore the judgment of the Circuit Court of Appeals for the Seventh Circuit should be affirmed.

Respectfully submitted,

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Attorneys for Respondent.

Chicago, Illinois.
April, 1936.

SUPREME COURT OF THE UNITED STATES.

No. 747.—October Term, 1935.

Henry A. Wallace, et al., Petitioners, *vs.* Arthur W. Cutten.	On Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[May 18, 1936.]

Mr. Justice Brandeis delivered the opinion of the Court.

Section 6 (b) of the Grain Futures Act, September 21, 1922, c. 369, 42 Stat. 998, 1001, provides that if the Secretary of Agriculture has reason to believe that any person "is violating" any provision of the Act, or any rules and regulations made pursuant thereto, or "is attempting" to manipulate the market price of grain in violation of the provisions of the Act, the Secretary may serve upon the person a complaint stating his charge in that respect and requiring him "to show cause why an order should not be made directing that all contract markets until further notice of the said commission refuse all trading privileges thereon to such person." The commission referred to is a board "composed of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General", before whom the hearing on the complaint is had. This case is here to review a decree of the United States Circuit Court of Appeals for the Seventh Circuit which set aside an order entered by the commission under that section. Certiorari was granted (297 U. S. —) on account of the novelty and importance of the question presented.

April 11, 1934, the Secretary of Agriculture caused such a complaint to be served upon Arthur W. Cutten. It recited that during the years 1930 and 1931 he was, and since had been, continuously a member of the Chicago Board of Trade; and that by its regulations made pursuant to the Grain Futures Act he was required:

"to report to the Grain Futures Administration his net position in futures owned or controlled by him, long or short, by grain and by future, when he had net open commitments in any one future equal to or in excess of 500,000 bushels. . . ." [and also]

"daily trades made by him on the Board of Trade, in futures in which he owned or controlled open commitments equal to or in excess of 500,000 bushels."

The complaint alleged further that:

"during the years 1930 and 1931 [he] conspired and colluded with various persons and grain firms of the Board of Trade to conceal his trading and position in the market from the Grain Futures Administration. In furtherance of said conspiracy, respondent made inaccurate, incorrect and false reports of his position in the market to the Grain Futures Administration, failed and refused to report accurately and correctly his position in the market and trades made by him," etc.

Then followed, in 44 numbered paragraphs, specifications of Cutten's alleged violations of the regulations and the Act on dates between March 6, 1930 and December 31, 1931.

A referee was appointed to take the evidence. The hearings before him began on May 14, 1934. Upon the opening of those proceedings, Cutten moved to quash the complaint on the ground that Section 6 (b) empowered the Commission to act only against persons who are presently committing offences; and that consequently, it had no authority to deny to him trading privileges for violations committed more than two years prior to the institution of the proceedings against him. The referee, without passing upon the motion to quash, proceeded to take the evidence; the hearings before him were concluded May 24, 1934; then the commission heard the complaint on briefs and oral argument; and before it the motion to quash was renewed. On February 12, 1935, the commission overruled the motion; made findings of fact on the evidence; concluded that Cutten's conduct "constitutes a violation of the Grain Futures Act, and the Rules and Regulations made pursuant thereto"; and ordered that "all contract markets refuse all trading privileges thereon to Arthur W. Cutten for a period of two years from March 1, 1935."

This suit was brought to set aside that order. The Circuit Court of Appeals held that the power conferred by Section 6 (b) is remedial, not punitive; that it is limited to suspending a trader who "is violating any of the provisions of this Act, or is attempting to manipulate the market price of any grain", in other words, one who is presently committing an offence; that at the time of the filing of the complaint there was no wrong existing to be remedied,

the latest wrongdoing complained of having occurred more than two years before the filing of the complaint by the Secretary of Agriculture; that, therefore, the commission was without authority to entertain the complaint, and should have granted the motion to quash. — F. (2d) —.

The Government argues that, since violations of the reporting requirements by their very nature, cannot be detected during the course of commission, the literal construction thus given to Section 6 (b) renders it impractical and ineffective as a means of dealing with those persons who violate any of the provisions of the Act or attempt to manipulate the market price of grain. Incidents in the history of the legislation are cited to support the Government's contention. In reply, it is argued that ample remedy is afforded by other provisions of the Act; that these confer broad power over boards of trade; and that the boards of trade may control their own members. It is urged that for the construction given to Section 6 (b) by the lower court support may be found in the different language employed in Section 6 (a). For it authorizes the commission to suspend "or to revoke the designation of a board of trade as a 'contract market' upon a showing that such board of trade has failed or is failing to comply" with the requirements prescribed. Attention is also called to the penalty provisions of Section 9.

It would be inappropriate for us to discuss these, and other, arguments presented. The language of Section 6 (b) is clear; and on the face of the statute, there can be no doubt concerning the intention of Congress. As was said in *Iselin* v. *United States*, 270 U. S. 245, 250-251: "The statute was evidently drawn with care. Its language is plain and unambiguous. What the Government asks is not a construction of a statute, but, in effect, an enlargement of it by the court, so that what was omitted, presumably [possibly] by inadvertence, may be included within its scope. To supply omissions transcends the judicial function." *A fortiori*, it may not be done for the purpose of making punishable action which, on the face of the statute, is merely to be prevented. Compare *United States* v. *Weitzel*, 246 U. S. 533, 542-543.

Affirmed.